72

Supreme Court, U.S.
FILED
07-641 SEP 17 2007
OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

PAUL F. BIDGOOD,

Petitioner,

v.

TOWN OF CAVENDISH

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE VERMONT SUPREME COURT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

Paul F. Bidgood
14 Fairbanks Street
West Boylston, Massachusetts 01583
(508) 835-8846

Petitioner Pro Se

QUESTION PRESENTED

Whether, upon the complete failure of the Respondent to comply with the conditional Orders of Dismissal and where the Petitioner then timely requested the reopening of the trial as specifically provided for in these Dismissal Orders, the Vermont judicial system can nonetheless deny the Petitioner of the due process of law and deprive the Petitioner of his day in court?

LIST OF PARTIES

Petitioner, Paul F. Bidgood

Respondent, Town of Cavendish

Intervenor, Vermont Agency of Natural Resources

TABLE OF CONTENTS

QUESTION PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 24

CONCLUSION 30

APPENDIX

TABLE OF AUTHORITIES

Cases

Baker v. State, 170 Vt. 194 (1999).....23

Bennett v. Travellers Insurance Co., 140 Vt. 339 (1981)....15

Bidgood v. Town of Cavendish, 2005 VT 64, 878 A.2d 290 cert. denied, U.S., 126 S.Ct. 796 (2005) ..... passim

Bidgood v. Town of Cavendish, 2007 Vt. LEXIS 183, 927 A.2d 790..... passim

Cappillino v. Hyde Park Central School District, 135 F.3d 264 (2nd Cir. 1998).....20, 25

Choice Hotels v. Goodwin and Boone, 111 F.3d 469 (4th Cir. 1993) 20, 25

City of West Covina v. Perkins, 525 U.S. 234 (1999)....20, 28

Cliche v. Cliche, 143 Vt. 301 (1983) 20

Daimler Chrysler v. Quimette, 2003 VT 47, 175 Vt. 316 (2003).....21

Derosia v. Liberty Mut. Ins. Co., 155 Vt. 178 (1990)....26, 28

Fergusen v. Town of Sheffield, 52 Vt. 77 (1879) 17

Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144 (2003).....29, 30

Fournier v. Fournier, 169 Vt. 600 (Mem. 1999).....26, 28

Hansen v. Town of Charleston, 157 Vt. 329 (1991) 15

In re Bill, 168 Vt. 439 (1998).....18

In re Cendant Corp. Prides Litigation, 235 F.3d 176 (3rd Cir. 2000).....20, 26

In re Kisiel, 172 Vt. 124 (1999).....23

In re: 310 Associates, 346 F.3d 31 (2nd Cir. 2003).....20

Kinan v. Cohen, 268 F.3d 27 (1st Cir. 2001).....19, 25

Lakeside Equipment Corp. v. Town of Chester, 173 Vt. 317 (2002).....22

Larkin v. City of Burlington, 172 Vt. 566 (Mem. Dec. 2002).....23

Lynch v. Household Finance Corp., 405 U.S. 538 (1972)...17

Mathews v. Eldridge, 424 U.S. 319 (1976).....29

Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978).....28, 29

Mullane v. Central Hanover Bank & Trust, 339 U.S. 306 (1950).....29

Muze Inc. v. Digital on Demand, Inc., 356 F.3d 492 (2nd Cir. 2004).....20, 25

Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988).....30

Petition of Vermont Electric Power Producers, Inc., 165 Vt. 282 (1996).....22

Pioneer Investment Services Co. v. Brunswick Associates Ltd., 507 U.S. 380 (1993).....20, 26

Schiavone v. Fortune, 477 U.S. 21 (1986).....28

Societe Internationale v. Rogers, 357 U.S. 197 (1958) 28

State v. Solomon, 128 Vt. 197 (1969) 23

Town of Randolph v. White, 166 Vt. 280 (1997) 29

Town of Shrewsbury v. Davis, 101 Vt. 181 (1928).....24

Vermont Department of Public Service v. Massachusetts Municipal Wholesale Electric Co., 151 Vt. 73 (1988).....22

United States Constitutional Provisions

Right to interstate travel 1, 5

U.S. CONST. Amend. I 1, 5

U.S. CONST. Amend. V.....1, 5

U.S. CONST. Amend. XIV.....1, 5

Vermont Constitutional Provisions

Vt. Const. of 1777, ch. I, art. VI.....23

Federal Statutes

23 U.S.C. § 206.....5

23 U.S.C. § 206(g)(1).....1

23 U.S.C. § 206(h)(4)(A).....1

23 U.S.C. § 206(h)(4)(B).....1

42 U.S.C. § 1983.....1, 5

42 U.S.C. § 1988.....1, 5

Vermont Statues

3 V.S.A. § 807.....2, 15, 18

10 V.S.A. § 441.....5

10 V.S.A. § 441(c).....1

12 V.S.A. § 4721.....2, 19

19 V.S.A.....24

19 V.S.A. § 5(c).....2, 8

19 V.S.A. § 5(d)(8).....2, 15, 19, 23

19 V.S.A. § 5(f).....2, 15, 19, 24

19 V.S.A. § 741..... passim

19 V.S.A. § 742..... passim

19 V.S.A. § 971.....2, 10

19 V.S.A. § 976.....2, 10, 12

23 V.S.A. § 3201(7) 1

23 V.S.A. § 5202(a) 1

Federal Rules Of Civil Procedure

Fed. R. Civ. P. 27

Fed. R. Civ. P. 41(a)(2) 25

Fed. R. Civ. P. 60(b) 25, 26

Fed. R. Civ. P. 60(b)(1) 1, 20, 26

Fed. R. Civ. P. 60(b)(6) 1, 20, 26

Vermont Rules Of Civil Procedure

Order Promulgating Amendments to the Vermont Rules of Civil Procedure and the Vermont Rules of Appellate Procedure, Vermont Supreme Court, October Term, 2006 27

V.R.C.P. 27

V.R.C.P. 1 1

V.R.C.P. 3 ..... 1, 21

V.R.C.P. 5(b) 1

V.R.C.P. 5(e) 1, 21, 27

V.R.C.P. 6(a) 1

V.R.C.P. 6(e) 1

V.R.C.P. 50(b) 27

V.R.C.P. 59(b) 27

V.R.C.P. 59(e) 1

V.R.C.P. 60(b) ..... passim

V.R.C.P. 60(b)(1) ..... passim

V.R.C.P. 60(b)(6) ..... passim

V.R.C.P. 74 8

Agency of Natural Resources Policy

ANR Policy 13 14

Other Authorities

Restatement of the Law (Second) Judgments § 12, 115 (1982) 14

Restatement of the Law (Second) Judgments § 26, 233-234 (1982) 16

Restatement of the Law (Second) Judgments, chapter 1, 6-7 (1982) 18

Webster's New World Dictionary, Third College Edition, (1988) 9

Newspapers

The Black River Tribune, April 1, 2004.....5

OPINIONS BELOW

The OPINION in the present litigation of the Vermont Supreme Court appears in the Appendix (App.) at 1-6 and is reported at *Bidgood v. Town of Cavendish*, 2007 Vt. LEXIS 183, 927 A.2d 790 (*Bidgood II*).

The OPINION in the earlier litigation of the Vermont Supreme Court is reported at *Bidgood v. Town of Cavendish*, 2005 VT 64, 878 A.2d 290 cert. denied, U.S., 126 S.Ct. 796 (2005) (*Bidgood I*). App. 29-35.

JURISDICTION

The date on which the highest state court decided this case was May 16, 2007. A copy of that decision appears in the App. at 1-6.

A timely motion for reargument was thereafter denied on June 20, 2007 and a copy of the order denying rehearing appears in the App. at 19.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Earlier Litigation (*See* Petition for Writ of Certiorari and Supplemental Brief filed in *Bidgood I*):

Procedural Matters

V.R.C.P. 1	V.R.C.P. 59(e)
V.R.C.P. 3	V.R.C.P. 60(b)(1)
V.R.C.P. 5(b)	V.R.C.P. 60(b)(6)
V.R.C.P. 5(e)	Fed.R.Civ.P. 60(b)(1)
V.R.C.P. 6(a)	Fed.R.Civ.P. 60(b)(6)
V.R.C.P. 6(e)	

Substantive Matters

10 V.S.A. § 441(c)	42 U.S.C. § 1983
23 V.S.A. § 3201(7)	42 U.S.C. § 1988
23 V.S.A. § 3202(a)	First Amendment
23 U.S.C. § 206(g)(1)	Fifth Amendment
23 U.S.C. § 206(h)(4)(A)	Fourteenth Amendment
23 U.S.C. § 206(h)(4)(B)	Right to interstate travel

Present Litigation:

The continuing illicit effects of the Vermont Supreme Court's wrongful treatment of the above provisions, statutes

is to be heard in Washington superior court. With that being the law, the Windsor superior court, where the earlier litigation was heard, had absolutely no jurisdiction to entertain the case. *See* 3 V.S.A. § 807 (Validity or applicability of any rule may be determined in an action in Washington superior court). The court also exceeded its jurisdiction because when it allowed the docketing of the case in the earlier litigation, it acted beyond its statutory authority when it did not: 1) suspend in-court hearings; 2) refer the matter to three disinterested commissioners; 3) wait for the commissioners to hold their initial hearing and 4) wait for the commissioners to make their required report to the court, but instead the court went on and directly held the in-court hearing. *See* 19 V.S.A. § 741 ("The court shall appoint three disinterested landowners as commissioners...."); 19 V.S.A. § 742 ("The commissioners ... after completing their inquiries, they shall make a report to the court...."); *Hansen v. Town of Charleston*, 157 Vt. 329, 332 (1991) ("the [proposed reclassification] matter must be referred to three disinterested commissioners to inquire into the convenience and necessity of the proposal and report to the court.") and *Bennett v. Travellers Insurance Co.*, 140 Vt. 339, 343 (1981) ("The lack of statutory authority to make a particular order or judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack.").

Secondly, the earlier judgment substantially infringes upon the Board which has exclusive jurisdiction to review Cavendish's decision not to maintain the public highway leading to Petitioner's property. *See* 19 V.S.A. § 5(d)(8) ("The board shall ... hear and determine disputes involving the decision of a selectboard ... not to plow ... a highway during the winter....") and 19 V.S.A. § 5(f) ("The board shall have the power to determine and adjudicate all matters over which it is given jurisdiction."). Indeed, as stated above, in its Order the Board determined that it would take up the merits of Petitioner's claims—it is the Vermont

and rules in the earlier litigation along with the Vermont Supreme Court's stance of denying the Petitioner of the Due Process of Law.

3 V.S.A. § 807	19 V.S.A. § 741
12 V.S.A. § 4721	19 V.S.A. § 742
19 V.S.A. § 5(c)	19 V.S.A. § 971
19 V.S.A. § 5(d)(8)	19 V.S.A. § 976
19 V.S.A. § 5(f)	

STATEMENT OF THE CASE

Petitioner Paul F. Bidgood submits this Petition for Writ of Certiorari to the Vermont Supreme Court in order to correct the manifest abuse of authority undertaken by the Vermont judicial system.

The litigation is in two parts: the earlier litigation reported at *Bidgood I* and the present litigation reported at *Bidgood II*.

In a nutshell, the numerous errors of the earlier litigation is the farce it makes of the judicial process, while the error of the present litigation is that it grounds its faith in the earlier farce.

Earlier Litigation

For context, set out below are several pertinent aspects of the earlier litigation, however a more complete presentation is found in Petitioner's earlier Petition for Writ of Certiorari and Supplemental Brief filed with the Court in *Bidgood I*.

While Petitioner was engaged in the earlier litigation with Respondent, the Town of Cavendish (Cavendish), and the Intervenor, the Agency of Natural Resources (ANR), the parties reached a conditional Stipulation of Settlement. The settlement was incorporated into conditional Orders of Dismissal dated May 16, 2003 which set a deadline of August 14, 2003 to reopen the trial by stating: "... with leave to reopen within ninety (90) days if the conditions ... of the Stipulation for Settlement are not satisfied." Printed Case (PC) 156. App. 51.

Supreme Court's improper affirmance in the earlier litigation that lead the Board astray.

Thirdly, as stated above, it is self-evident that the court in the earlier litigation was incapable of making an adequately informed determination of its own jurisdiction (docketing a case that was required to be heard in Washington superior court and holding in-court hearings in contravention of the statutory requirements that the three disinterested commissioners are to undertake the initial hearing and make a report to the court) and, as the court refused to reopen the trial based on its own misunderstanding of the procedural requirements, and where Petitioner complied with the proper procedures, the judgment in the earlier litigation should be considered a nullity.

Additionally, the Restatement of the Law (Second) Judgments § 26, 233-234 (1982) makes it clear that principles of res judicata do not apply when: 1) the court in the first action expressly reserved to the plaintiff the right to maintain the second action; 2) the judgment in the first action was plainly inconsistent with the fair and equitable implementation of a statutory scheme or 3) it is shown that policies favoring preclusion of a second action are overcome for an extraordinary reason such as the invalidity of a restraint on personal liberty or the failure of the first litigation to yield a coherent disposition of the controversy. Brief 12-14. First, the court in the earlier litigation expressly reserved the right to reopen the trial for the Petitioner and have the merits of the case heard if Cavendish failed to fulfill the contingencies within 90 days. This is precisely the outcome that happened—Cavendish failed to timely comply with the Orders of Dismissal while Petitioner timely complied with the Orders of Dismissal and requested the reopening of the trial. Simply put, the court and Vermont Supreme Court misapplied the procedures necessary to reopen the trial and consequently the unnecessary present litigation was commenced.

Ninety days later, on Thursday August 14, 2003, after Cavendish failed to fulfill the necessary conditions, Petitioner properly mailed a Motion To Inform The Court That Plaintiff Rescinds Settlement (Motion to Inform) including a request to reopen the trial as provided for in the conditional Orders of Dismissal. PC 128. App. 48-50. This request to reopen was received by the trial court on Monday August 18, 2003. PC 135. App. 47.

In direct contravention of the conditional Orders of Dismissal, requiring the reopening of the trial, Cavendish instead on September 11, 2003, in its illicit effort to side-step the judicial process, initiated separate proceedings (these separate proceedings are the basis of the present litigation) by giving written notice to Petitioner of its intent to down-classify Old Bailey Hill Road leading to Petitioner's property in order to relieve Cavendish from the statutory obligation to provide year round highway maintenance and thereby deny Petitioner year round access to his property. PC 129. App. 46.

Mainly because the trial court had not responded to Petitioner's Motion to Inform and because of Cavendish's actions on September 11, 2003 in direct contravention of the conditional Orders of Dismissal, on September 30, 2003 the Petitioner mailed a Motion To Resume Trial (Motion to Resume) repeating the request to reopen the trial. PC 130-132. App. 42-45.

On October 16, 2003 the trial court denied the Petitioner's Motion to Inform stating in full: "Dismissed as a motion, as it does not contain an appropriate request for court action." PC 133. App. 40-41. This ruling is perverse, ludicrous and Orwellian: Petitioner requested the only appropriate court action available to Petitioner on August 14, 2003, i.e., a request to reopen the trial as provided for in the conditional Orders of Dismissal—so how can it be characterized as inappropriate!

Later, on November 10, 2003 the trial court denied Petitioner's Motion to Resume stating in full: "Plaintiff has

not shown grounds to set aside the Order of May 16, 2003 in the manner required by Rule 60(b) of the Vermont Rules of Civil Procedure. Neither has plaintiff shown that the contingency of reclassification failed to occur." PC 134. App. 38-39. This ruling is both irrefutably an abuse of discretion and erroneous. First, it was conclusively shown to the trial court prior to its ruling that Cavendish had failed to fulfill the contingency within the 90 day conditional settlement period, as Cavendish did not even initiate its illicit effort to side-step the judicial process until September 11, 2003, fatefully after the court-imposed deadline of August 14, 2003 and after Petitioner's request of August 14, 2003 to reopen the trial. PC 128, 135 and 129. App. 48, 47 and 46 (respectively Petitioner's request to reopen the trial dated August 14, 2003, Petitioner's request to reopen the trial received by the court on August 18, 2003 and Cavendish's illicit effort initiated on September 11, 2003). The only proper characterization of the trial court's statement above is that it erroneously concluded that September 11, 2003[1] is prior to August 14, 2003—this is nonsensical and hence erroneous! Secondly, it is black letter law that, even if Petitioner's request to reopen the trial should have been reviewed under Rule 60(b), the trial court was compelled to analyze the request under 60(b)(1) for either mistake of fact, since Petitioner's request of August 14, 2003 was in fact

---

[1] Although Cavendish illicitly initiated the down-classifying of TH 36, Old Bailey Hill Road by giving written notice of such intent to Petitioner on September 11, 2003, Cavendish did not actually effect such down-classification until November 12, 2003—2 days after the trial court on November 10, 2003 had stated that Petitioner has not "shown that the contingency of reclassification failed to occur."—again, the trial court's statement is nonsensical and erroneous! PC 129, 134 and 50. App. 46, 38 and 36, (respectively Cavendish's illicit initiation of its efforts on September 11, 2003, the court's erroneous statement that the condition had been fulfilled by November 10, 2003 and Cavendish's own confirmations of the belated fulfillment of the condition on November 12, 2003).

timely or under 60(b)(1) for excusable neglect if Petitioner's request was inappropriately perceived by the trial court to have been late. If the trial court had properly applied either aspect of 60(b)(1) it would have been compelled to rule in Petitioner's favor and reopen the trial. It is beyond debate that the trial court abused its discretion when it failed to apply the appropriate law to Petitioner's situation and instead inappropriately applied 60(b)(6).

It is patently obvious that in *Bidgood I,* the trial court and the Vermont Supreme Court acted for Cavendish's and ANR's benefit and illicitly refused to reopen the trial, whereupon the harms noted by Petitioner in the earlier Petition for Writ of Certiorari manifested themselves and are now fully visited upon the Petitioner.[2] In the earlier Petition for Writ of Certiorari, Petitioner noted that perhaps more harmful than these legal and judicial harms was the more palpable and direct harm caused by the trial court's illicit failure to reopen the trial visited upon the Petitioner by actually being cast as the "Town Fool" in the front page article in the newspaper of record for the Cavendish and surrounding area. See *The Black River Tribune,* April 1, 2004, April Fools edition. PC 93-94 and 193-194. If the trial court had rightfully reopened the trial in the summer of 2003, Petitioner would have had his meritorious claims heard and there would not have been a basis for the newspaper's

---

[2] In Petitioner's earlier Petition, Petitioner indicated he would be subject to various infringements and harms if the trial was not reopened: deprivation of the First Amendment rights of Free Speech and Association; deprivation of the Fifth Amendment right that property should not be taken without just compensation; deprivation of the Fourteenth Amendment rights to Procedural Due Process, Substantive Due Process and the Equal Protection of the Laws, deprivation of the Right to Interstate Travel; deprivations of the protections provided by 42 U.S.C. § 1983, 42 U.S.C. § 1988, deprivations of the protections provided by 23 U.S.C. § 206 and 10 V.S.A. § 441 that private property will not be taken for public trails and that a *per se* nuisance of the unmaintained and obstructed public highway leading to and preventing access to Petitioner's property would persist.

front page April Fools article publicly ridiculing the Petitioner. No American citizen should have to endure the public ridicule of being cast as the Town Fool when he is properly utilizing the state's judicial process to vindicate his property and other rights—especially when he is following court orders in doing so!

The earlier litigation demonstrates that the Vermont judicial system is broken. For more than ten years Petitioner, a Massachusetts resident, has sought to secure access to his Vermont property in order to take up residence there. Cavendish and ANR have worked together in retaliation to down-classify and thereby downgrade the only public highway providing access to Petitioner's property and to withhold the necessary public highway maintenance such that the highway is not traversable by vehicle. Cavendish and the ANR have further worked to deny Petitioner's legal access by locating a recreational snowmobile trail in support of the their favored "client's" (Vermont Association of Snowtravellers' (VAST)) private interests, incredibly right onto the would-be traversable portion of the public highway, as a further and complete impediment to access for six months of the year. Without Cavendish's public maintenance of the highway, Petitioner cannot access his property as others similarly situated are able to do. Further, Petitioner cannot even maintain the highway himself without being put in the untenable position of fighting the 40,000 member-strong VAST organization—with such a diverse and potentially unruly crowd, inevitably this would lead to heated shouting, physical confrontations and perhaps episodes of discharging firearms. The Vermont judicial system has illicitly supported these contemptible efforts by denying Petitioner his day in court.

Present Litigation

As stated above, the present litigation has its roots in the earlier litigation.[3]

In response to Cavendish's efforts to side-step the judicial process by initiating separate proceedings to down-classify Old Bailey Hill Road, and Cavendish's ultimate determination to do so by their vote on November 12, 2003, the Petitioner was forced to appeal such illicit action on December 9, 2003 to the Vermont Transportation Board (Board) commencing the present litigation. PC 260. Cavendish filed a Motion to Dismiss with the Board on the grounds of waiver, equitable estoppel, collateral estoppel, election of remedies (PC 48-76, 95-106) and res judicata (PC 13, footnote 1) premised on the then pending earlier litigation. Petitioner filed an Opposition. PC 77-94. The Board held a Hearing, found these grounds unpersuasive and in denying Cavendish's Motion to Dismiss ordered:

> It is the Board's position that balancing all of the equities involved and exercising its discretion, applying its sense of fairness and judgment, Mr. Bidgood may be allowed his appeal to the Board. However, the Board acknowledges that any decision it renders as a result of the merits hearing may necessarily be open to challenge depending on the outcome of the pending Vermont Supreme Court appeal. In order to avoid duplicity of actions and uncertainties of outcomes, the Board therefore stays

---

[3] In Footnote 4 of Petitioner's earlier Petition, Petitioner foreshadowed this present litigation and explained: "After Petitioner timely requested the reopening of the trial so that Petitioner could secure the statutorily required maintenance for the public highway route to his property, Cavendish began statutory proceedings concerning TH 36 Old Bailey Hill Road to assign a different classification to this highway and thereby be relieved of the obligation to provide this winter maintenance—dragging Petitioner into yet further litigation. Petitioner's appeal of this action is now before the State of Vermont's Transportation Board as Docket Number T.B. 215 (2003)."

> further action on Paul Bidgood's petition. Board Order dated December 29, 2004. PC 253. App. 15-18.

After the Vermont Supreme Court issued its opinion in the pending earlier litigation of *Bidgood I* on September 15, 2005 (PC 242-245 and 246-248) App. 29-35, the Board then informed the Petitioner in full that:

> The state Transportation Board, meeting September 15, voted to dismiss your appeal, based on findings in the recent Supreme Court rulings in your case. The rulings, affirming the road maintenance agreement reached by all parties, left the board with nothing to consider. Board letter dated September 23, 2005. PC 240. App. 14.

Petitioner appealed the Board's dismissal to the Windsor superior court. PC 8. Cavendish filed a Motion to Dismiss, again on the grounds of res judicata, collateral estoppel, equitable estoppel and waiver and the newly asserted ground of contract. PC 136-161. Petitioner filed an Opposition. PC 11-135.

In direct contravention of controlling law, the trial court failed to hear Petitioner's appeal on the record. *See* Petitioner's Brief to the Vermont Supreme Court (Brief) at 7, PC 8-10 (Windsor superior court docket entries, indicting absence of filing of the Board's record in the Windsor court) and PC 236-239 (filing of Board's record in Washington superior court) and 19 V.S.A. § 5(c) ("Final orders of the board may be reviewed on the record by the superior court pursuant to Rule 74 of the Vermont Rules of Civil Procedure.").

The trial court reviewed Cavendish's Motion to Dismiss as a request to affirm the previous dismissal by the Board and affirmed. PC 3-7. App. 7-13. Petitioner appealed to the Vermont Supreme Court which likewise affirmed. *Bidgood II*. App. 1-6. The Vermont Supreme Court noted the trial court's reasoning and stated:

> The superior court affirmed the Board's order, ruling that most of [Petitioner's] claims were ... barred by ... res judicata. The court further ruled that [Petitioner] was contractually barred from challenging [Cavendish's] reclassification ... on the basis that [Petitioner] was prohibited by the implied covenant of good faith and fair dealing from acting to undermine the settlement .... *Bidgood II* at ¶ 6.

The Vermont judicial system is using the present litigation of *Bidgood II*, to add insult to injury. The trial court and the Vermont Supreme Court now publicly smear Petitioner's name with assertions that Petitioner acted against Cavendish with malice, acted in a deceitful and insincere manner, acted in an unjust and dishonest manner and did not act according to the rules. ("**good faith** absence of malice or any intention to deceive; good intentions; sincerity" / "**fair** ... 6 just and honest ... 7 according to the rules". Webster's New World Dictionary, Third College Edition, (1988)). In *Bidgood II* the Vermont Supreme Court states: "The trial court was correct in observing, however, that Vermont law implies in every agreement an implied covenant of good faith and fair dealing to refrain from any actions that would undermine either party's right to receive the benefits of the agreement." *Bidgood II* at ¶ 8. Petitioner, like all American citizens, should not have his reputation smeared by a state's judicial system when he is legitimately utilizing that very judicial system to vindicate his property and other rights.

For some "unknown" reason, the Vermont Supreme Court just can't seem to get either the facts or the applicable law in this case right. For instance, in the present litigation the Vermont Supreme Court states Petitioner filed: "an appeal from the road commissioner's reclassification ...." *Bidgood II* at ¶ 2. This is hogwash, but illustrative of the make-believe land in which the Vermont Supreme Court has approached this case. The "road commissioners" did not act in regards to this dispute and the Petitioner filed no appeal of the non-existent road commissioners' reclassification.

Petitioner appealed the Cavendish Selectmen's reclassification of Old Bailey Hill Road, not the county road commissioners' reclassification. Any cause made to the road commissioners (previously appointed county officials) is proper only under 19 V.S.A. § 971, where the court hears any appeal of the road commissioners' actions only under 19 V.S.A. § 976 which provides: "The superior court shall hear the appeal on questions of fact and law and render final judgment." Conversely, the challenge to the Selectmen's action in reclassifying the public highway is proper only under 19 V.S.A. § 741, where the Legislature has mandated: "The court shall appoint three disinterested landowners [to act] as commissioners ...." The Legislature has also mandated that the court shall suspend any further in-court proceedings until after the three disinterested commissioners make their report to the court. *See* 19 V.S.A. § 742 ("The commissioners shall give notice ... where they will examine the area and hear testimony. After completing their inquiries, they shall make a report to the court. The court may accept or reject the report in whole or in part ...."). The distinction between an appeal of any road commissioners' action or the Selectmen's reclassification is crucial, because under an appeal of any road commissioners' actions the court has discretion to act, while under the appeal of the Selectmen's reclassification the court's actions are legislatively circumscribed.

Again, in the present litigation the Vermont Supreme Court fails to recount the actual facts and states: "The order dismissed the case with prejudice 'with leave to reopen within ninety (90) days' if certain conditions were not satisfied. In late August 2003, after the ninety-day deadline had passed, [Petitioner] moved pro se to rescind the settlement agreement ...." *Bidgood II* at ¶ 3. Although the Vermont Supreme Court correctly recounts that the dismissal order is conditional and provides for the trial to be reopened, the Vermont Supreme Court ignores the fact that Cavendish failed to fulfill the conditions such that upon Petitioner's

timely request to reopen the trial on August 14, 2003, i.e., the last day of the conditional settlement period, the court was compelled to reopen the trial.

In the present litigation, the Vermont Supreme Court incompletely states that Petitioner moved to rescind the settlement agreement. In fact, Petitioner moved to reopen the trial—since 1) the Orders of Dismissal were conditional, 2) Cavendish had failed to fulfill the conditions and 3) Petitioner had timely requested the reopening of the trial, there was no validly consummated settlement in which to move to rescind. The Petitioner's Motion to Inform states in full: "NOW COMES [Petitioner] and informs the Court that [Petitioner] rescinds settlement and requests resumption of the [trial] be set at the earliest convenience of the court." PC 128. App. 49. The singular essence of Petitioner's Motion to Inform is the request to reopen as the proposed settlement had dissolved by operation of law. Moreover, the Vermont Supreme Court's temporal assessment of Petitioner's action is erroneous—Petitioner acted timely by mailing the request to reopen on Thursday August 14, 2003. The Vermont Supreme Court knows that this request to reopen was received by the trial court on Monday August 18, 2003, but continues to "find" that this request to reopen was not filed until "late August". For the truth, *see* PC 135, App. 47 and the trial court clerk's <u>own handwriting</u> indicating the court's receipt of Petitioner's Motion to Inform on August 18, 2003.

In recounting the earlier litigation, the Vermont Supreme Court incorrectly states: "Treating the motion to rescind as a motion for relief under Vermont Rule of Civil Procedure 60(b), the court found no basis for relief and denied the motions." *Bidgood II* at ¶ 3. However, in the earlier litigation, the court <u>did not</u> treat Petitioner's first motion, i.e., Motion to Inform under V.R.C.P. 60(b). In response to Petitioner's Motion to Inform the court stated in full: "Dismissed as a motion, as it does not contain an appropriate request for court action." PC 133. App. 40. As stated above, this is Orwellian as Petitioner requested the

only relief available—a request to reopen the trial based on Cavendish's failure to fulfill the necessary conditions. It is true that the court treated Petitioner's second motion, i.e., Motion to Resume, which repeated the request to reopen the trial, under V.R.C.P. 60(b), but in this regard, the court without question misapplied V.R.C.P. 60(b) by applying 60(b)(6) rather than 60(b)(1) for mistake of fact or excusable neglect and hence demonstrably abused its discretion. Because the trial court had abused its discretion, the Vermont Supreme Court had no justifiable basis to affirm the court's denial of Petitioner's request to reopen the trial.

In recounting how it previously addressed Petitioner's appeal in the earlier litigation, the Vermont Supreme Court stated: "We held, however, that most of [Petitioner's] claims amounted to a collateral attack on the judgment of dismissal which were barred by the doctrine of res judicata." *Bidgood II* at ¶ 4. However, this simply highlights how wrong the Vermont Supreme Court is because it is black letter law that res judicata is inapplicable in regards to a V.R.C.P. 60(b) motion—in essence the Vermont Supreme Court grounds its findings on erroneous facts, and founds its conclusions upon ignoring the trial court's incorrect application of 60(b)(6) rather than 60(b)(1) and for good measure adds in its own illicit legal barriers such as res judicata to prevent Petitioner's pursuit of justice.

Also, in recounting how it previously ruled in the earlier litigation, the Vermont Supreme Court states; "We also specifically rejected [Petitioner's] claim that the court lacked jurisdiction because it had failed to follow certain procedures relating to road reclassifications." *Bidgood II* at ¶ 4. The Vermont Supreme Court doesn't even have it right as to whether Petitioner filed an appeal of the county road commissioners (which Petitioner did not do where such an appeal would be under 19 V.S.A. § 976 and where the court's freedom of action is not circumscribed by legislative directive) as it fails to note that Petitioner's appeal is instead of the Cavendish Selectmen's reclassification (whereby the

appeal is under 19 V.S.A. § 741 and 19 V.S.A. § 742 and where the court's ability to act is legislatively circumscribed).

In further recounting its earlier rulings, the Vermont Supreme Court continues to mischaracterize the earlier litigation when it states: "While [Petitioner] was pursuing the claims which resulted in the first appeal, he was also seeking to overturn one of the specific contingencies set forth in the settlement agreement itself." *Bidgood II* at ¶ 5. This also is Orwellian. It was Cavendish that failed to fulfill the contingencies whereupon Petitioner legitimately requested the reopening of the trial. It was Cavendish that nonetheless illicitly sought to institute the provisions of the failed settlement by down-classifying Old Bailey Hill Road and forcing Petitioner to appeal Cavendish's action to the Board. The conditional settlement never culminated into a legally enforceable contract because Cavendish failed to fulfill the conditional Orders of Dismissal within 90 days and the Petitioner timely requested the reopening of the trial—at this point in time the conditional settlement dissolved under its own terms and the only legitimate action was to reopen the trial.

In regards to the present litigation, the Vermont Supreme Court incorrectly states: "The Town selectboard subsequently held the *required hearing* and voted to reclassify the road as contemplated in the agreement." *Bidgood II* at ¶ 6 (emphasis added). This is fallacious. The "required hearing" set out in the conditional settlement agreement and in the conditional Orders of Dismissal was to occur by August 14, 2003. Cavendish held no such hearing by August 14, 2003. In fact, the present litigation started when after Cavendish failed to fulfill the conditional Orders of Dismissal within 90 days, i.e., by August 14, 2003, whereby the Petitioner timely requested to reopen the trial on August 14, 2003 in accordance with the Orders of Dismissal, Cavendish nonetheless illicitly sought to revive and implement the failed settlement agreement by mailing

Petitioner notice on September 11, 2003 of its plan to hold a hearing on October 14, 2003 concerning Cavendish's intent to down-classify the only public highway providing access to Petitioner's property and thereby deprive Petitioner of the use of his property. Cavendish's hearing on October 14, 2003 is not the "required hearing" as contemplated by the conditional settlement agreement and conditional Orders of Dismissal. In fact, this hearing of October 14, 2003 and Cavendish's ultimate vote on November 12, 2003 to reclassify the public highway leading to Petitioner's property is further harm to Petitioner that never would have occurred if the court and the Vermont Supreme Court had properly reopened the trial.

In regards to the trial court's determination in the present litigation that Petitioner is barred from challenging Cavendish's reclassification based on res judicata and the Vermont Supreme Court's affirmance, in Petitioner's Brief to the Vermont Supreme Court, Petitioner demonstrated that it is inapplicable to apply any aspects of the earlier litigation to the present litigation and that principles of res judicata do not apply. Brief 7-22. For instance, Restatement of the Law (Second) Judgments § 12, 115 (1982) makes it clear that: 1) if the subject matter of the first action was beyond the court's jurisdiction; 2) or allowing the first judgment to stand would infringe on the authority of another tribunal or agency of government or 3) the first judgment was rendered by a court lacking the ability to make an informed determination of its jurisdiction and as a matter of procedural fairness the party seeking to avoid the judgment should have the opportunity to challenge the court's jurisdiction then the principles of res judicata do not apply. First, the court should not even have entertained the earlier litigation because at bottom the dispute is premised on ANR's assertion that ANR can prevent Cavendish from performing winter maintenance on the only public highway leading to Petitioner's property based on ANR Policy 13. However, Vermont law is clear that any challenge to the validity or application of Policy 13

Secondly, the judgment in the earlier litigation is plainly inconsistent with a fair and equitable implementation of the statutory scheme. In the first instance, the Windsor superior court's determination to docket Petitioner's earlier action, rather than referring the matter to the Washington superior court and, in the second instance, the court's failure to suspend in-court proceedings and wait for the three disinterested commissioners to undertake their independent hearing and make their report to the court, deprived the earlier litigation of any lasting validity.

Thirdly, Cavendish's actions prevent the Petitioner from the free and unhindered access to his property, thereby depriving Petitioner of the use of his property and constraining Petitioner's liberty. *See Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972) ("The right to enjoy property without unlawful deprivation ... or the right to travel, is in truth, a 'personal' right .... In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other."). Moreover, as stated above, in response to Petitioner's good-faith efforts to reopen the trial and efforts in preventing the earlier judgment from having any lasting effect, the trial court and Cavendish put Petitioner in the position of being cast as the Town Fool in the newspaper of record in Cavendish. In a similar vein as stated above, both Cavendish and the Vermont courts have further smeared Petitioner publicly by stating that Petitioner does not act in good faith and does not engage in fair dealing—further assaults upon the Petitioner's liberty.

To be sure, the Vermont courts do not apply principles of res judicata in highway cases. *See Fergusen v. Town of Sheffield*, 52 Vt. 77, 83 (1879) (Vermont Supreme Court would not apply strict common law rules of res judicata to highway proceedings where it would have absurd result of perpetuating an unnecessary highway: "Such a decision would involve the idea of permanency in our

highways not heretofore entertained") and *In re Bill*, 168 Vt. 439, 445 (1998) (same). Brief 14-15.

A more timely and relevant demonstration of why res judicata is not applied in highway proceedings is illustrated by another recent highway dispute in Cavendish. At the same time as Petitioner was undertaking efforts to reopen the trial in the earlier litigation, the Cavendish selectboard fought amongst themselves and down-classified two other public highways: 1) the only highway leading to sitting selectmen Dan Churchill's property and 2) the only highway leading to former selectmen James Ballantine's property. Such belligerent action lead to a town-wide revolt at the ballot box where, with a new slate of selectmen the following year, the new selectboard voted to change these two highways back to their previous classifications, thereby providing year round maintenance to ensure access to these properties. *See* Brief at 14-15, PC 19-22, 125-127. As a resident of Massachusetts, Petitioner can not seek relief at the ballot box and must resort to the Vermont judicial system and as the Vermont judicial system has made a farce of Petitioner's plight, the Petitioner has been denied justice.

Since Petitioner was not afforded a full and fair opportunity to litigate his claims in the earlier litigation, it would be improper to apply res judicata. PC 16-22. *See* Restatement of the Law (Second) Judgments, chapter 1, 6-7 (1982):

> The 'chance' to litigate ... a dispute [requires that the dispute is submitted] to a tribunal legally empowered to decide it according to *definite* procedural rules ...[such] that it is fundamentally unfair ... [and it would] be a denial of Due Process to treat an *undefined* procedural mechanism as yielding a conclusive result.... (emphasis added).

At the trial stage numerous errors where committed in the earlier litigation: 1) the court docketing the case in contravention of 3 V.S.A. § 807 which required the case be docketed in Washington superior court; 2) the court

undertaking in-court proceedings rather than waiting for the three disinterested commissioners to hold their initial and independent hearing and waiting for the commissioners to make their report to the court in contravention of 19 V.S.A. § 741 and 19 V.S.A. § 742; 3) failure of the court to join necessary parties in contravention of 12 V.S.A. § 4721; 4) failure of the court to refer the matter to the Board in contravention of 19 V.S.A. § 5(d)(8) and 19 V.S.A. § 5(f) and 5) failure of the court to provide unambiguous Orders of Dismissal in contravention of the requirements of due process.

Post trial numerous errors where made by the court in the earlier litigation: 1) court's failure to reopen the trial upon Petitioner's request mailed on August 14, 2003; 2) court's failure to treat Petitioner's Motion to Resume as a continuation of Petitioner's Motion to Inform and in treating the Motion to Resume as a 60(b)(6) motion rather than a 60(b)(1) motion and 3) the court's delay in mailing back to the Petitioner its Order denying Petitioner's Motion to Resume such that Petitioner lost the direct right of appeal in regards to the court's earlier Order denying Petitioner's Motion to Inform. (The trial court's Order denying Petitioner's Motion to Inform is dated October 16, 2003 and an appeal would be required to be filed by November 15, 2003. The trial court's Order denying Petitioner's Motion to Resume is dated November 10, 2003, but was not mailed to Petitioner until November 18, 2003—3 days after an appeal of the court's earlier Order would be due. Brief 19. PC 133-134. App. 38-39.)

On appeal, numerous errors were committed by the Vermont Supreme Court in the earlier litigation: 1) failing to find that Petitioner's Motion to Inform was mailed on August 14, 2003 and instead finding that it was filed on August 25, 2003; 2) failing to conclude that the trial court abused its discretion by treating Petitioner's request to reopen as a V.R.C.P. 60(b) motion in contravention of *Kinan v. Cohen*, 268 F.3d 27 (1st Cir. 2001); 3) failure to conclude

that the court's conditional Orders of Dismissal were ambiguous as to how Petitioner was to request to reopen the trial such that under *Choice Hotels v. Goodwin and Boone*, 111 F.3d 469 (4th Cir. 1993) the dismissal cannot be with prejudice; 4) failure to conclude that the court denied the Petitioner the due process of law when the court failed to notify Petitioner how to reopen the trial as required by *City of West Covina v. Perkins*, 525 U.S. 234 (1999); 5) failure to conclude that the court was wrong when the court failed to reopen the trial because Petitioner had not filed the request to reopen by August 14, 2003 in contravention of *Muze Inc. v. Digital on Demand, Inc.*, 356 F.3d 492 (2nd Cir. 2004) (application by letter within settlement period requires reopening of the trial) and *Cappillino v. Hyde Park Central School District*, 135 F.3d 264 (2nd Cir. 1998) (same); 6) failure to conclude the court abused its discretion by applying 60(b)(6) rather than 60(b)(1) to Petitioner's request to reopen the trial in contravention of *Pioneer Investment Services Co. v. Brunswick Associates Ltd.*, 507 U.S. 380, 393 (1993) (rules 60(b)(1) and 60(b)(6) "are mutually exclusive"); *In re: 310 Associates*, 346 F.3d 31, 35 (2nd Cir. 2003) (in explaining the use of 60(b)(1) to correct a district court's mistake of fact, the Second Circuit stated "that it was an abuse of discretion not to correct the obvious factual mistake in not treating plaintiff's pro se letter as a rejection of the settlement" and as a timely request to reopen the trial); *In re Cendant Corp. Prides Litigation*, 235 F.3d 176, 182 (3rd Cir. 2000) (abuse of discretion for the district court not to have analyzed the factors constituting excusable neglect under 60(b)(1)); 7) improper sua sponte application of res judicata by the Vermont Supreme Court to hold that Petitioner's Motion to Resume, which was treated by both the court and the Vermont Supreme Court as a 60(b)(6) motion, should be precluded by the Orders of Dismissal in contravention of *Cliche v. Cliche*, 143 Vt. 301, 306 (1983) ("the doctrine of 'res judicata' does not preclude a litigant from making a direct attack [under Rule 60(b)] upon the

judgment before the court which rendered it."); *Daimler Chrysler v. Quimette*, 2003 VT 47, ¶ 5, 175 Vt. 316, 319 (2003) ("this Court may raise the affirmative defense of res judicata sua sponte and for the first time on appeal, so long as the parties are given an opportunity to fully brief the issue") since, as stated above, res judicata does not prevent a direct attack and the Petitioner was never afforded an opportunity to brief the issue; 8) the failure of the Vermont Supreme Court to raise the affirmative defense of illegality and hold the failed conditional settlement void ab initio because it was not executed by Cavendish and as it required Cavendish to act in a predetermined manner and 9) improper use of selected portions of V.R.C.P. 3 and 5(e) by the Vermont Supreme Court where, if the entire provisions of these very same rules where applied and using the Vermont Supreme Court's own reasoning, Petitioner's request to reopen would be deemed timely.

In regards to the trial court's determination in the present litigation that Petitioner is contractually barred from challenging Cavendish's reclassification and the Vermont Supreme Court's affirmance, the plain fact is that there is no binding settlement agreement in which to hold Petitioner to. Brief 23-24. The Vermont Supreme Court ignores the plain fact that Cavendish failed to fulfill the conditional Orders of Dismissal within 90 days and the plain fact that Petitioner timely requested to reopen the trial—the proper outcome of such events simultaneously reinstating the trial and thereby terminating any vitality of the proposed settlement agreement. Viewed properly, there is no valid settlement agreement because necessary for its vitality is the court's illicit failure to reopen the trial. The parties' agreement was to reopen the trial if the events unfolded as they did—the parties did not agree to give Cavendish a second bite of the apple and thereby be allowed to side-step the judicial process by initiating the illicit separate proceedings before the Board. Therefore, the supposed settlement agreement is nonexistent. Moreover, the proposed settlement was never even executed

by Cavendish. The Vermont Supreme Court cannot bind Petitioner into an agreement that has failed and that Cavendish itself never saw fit to execute. When the parties drafted and signed the conditional and proposed settlement agreement, Cavendish's counsel and Cavendish's town manager were the only representatives present to sign for Cavendish. PC 61-64. The Cavendish selectboard never deliberated on, voted on nor signed the proposed settlement agreement. Without being properly executed by Cavendish, the signatures of Cavendish's counsel and town manager are insufficient to make the settlement agreement an enforceable contract. *See Lakeside Equipment Corp. v. Town of Chester*, 173 Vt. 317 (2002) (actions of the town manager do not bind the town in contract) and *Petition of Vermont Electric Power Producers, Inc.*, 165 Vt. 282 (1996) (actions of counsel do not bind Public Service Board in contract). Indeed, the conditional settlement agreement states: "By signing this agreement, signatories for Cavendish & Chester cannot legally bind their respective Selectboards to any action specified in this agreement, but their signatures signify their approval as to form." PC 64.

Worse yet, even if the conditional settlement agreement: 1) had actually been signed by Cavendish; 2) Cavendish had actually fulfilled the conditional Orders of Dismissal within 90 days and 3) Petitioner had not in fact exercised the right to reopen, the settlement agreement itself is nonetheless invalid as it impermissibly binds Cavendish in advance in the exercise of its police power by requiring Cavendish to ultimately act in a predetermined manner and thereby impermissibly tainting the supposed validity of any later deliberations. Brief 24-25. *See Vermont Department of Public Service v. Massachusetts Municipal Wholesale Electric Co.*, 151 Vt. 73, 81-82 (1988) ("if a public corporation enters into a contract that barters away or otherwise restricts the exercise of its legislative or police powers, then the contract is ultra vires and void ab initio" and a contract is void if "it impermissibly restricted the

future exercise of discretion and judgment by their legislative bodies") and *Larkin v. City of Burlington*, 172 Vt. 566, 568 (Mem. Dec. 2002) ("municipality's statutory authority to exercise its police power is in nature of public trust and thus cannot be bartered away ... courts are likely to find illegal ... an express bilateral agreement that bargains away the municipality's future use of the police power"). As stated above, it was Cavendish's counsel and town manager that assisted in drafting and who signed the proposed conditional settlement. Not only are their signatures insufficient to make the settlement agreement an enforceable contract, but the terms they signed for impermissibly bind the exercise of Cavendish's police power and therefore makes the proposed conditional settlement void at the outset.

In the present litigation, upon determining it would hear the merits of Petitioner's claims and would not apply principles of res judicata, the Board inappropriately stayed the hearing on the merits, and then later, upon the Vermont Supreme Court's opinion in *Bidgood I* of the earlier litigation, improperly dismissed Petitioner's appeal. Brief 25-29. Petitioner was fully expecting the Board to vindicate the public's and Petitioner's right to the use of the highway leading to Petitioner's property. *See State v. Solomon*, 128 Vt. 197 (1969) (all highways belong to the State of Vermont); *In re Kisiel*, 172 Vt. 124 (1999) (a town may not perpetuate an out of repair and unusable highway) and *Baker v. State*, 170 Vt. 194 (1999) (discussing Vt. Const. of 1777, ch. I, art. VI and framer's overarching objective was that everyone have an equal share in the fruits of the common enterprise). Petitioner is requesting an equal share of the highway maintenance provided by Cavendish and no more. It is the Board, and the Board only, who has been given the authority to hear Petitioner's challenge to Cavendish's decision not to maintain the only highway leading to Petitioner's property in the wintertime. *See* 19 V.S.A. § 5(d)(8) ("The board shall ... hear and determine disputes involving the decision of a selectboard ... not to plow ... a

highway during the winter....") and 19 V.S.A. § 5(f) ("The board shall have the power to determine and adjudicate all matters over which it is given jurisdiction."). Vermont law is clear that in exercising this authority, the Board shall proceed with its duty, even if other aspects of 19 V.S.A. (Vermont highway law) are then being litigated as is the situation in Petitioner's case. *See Town of Shrewsbury v. Davis*, 101 Vt. 181 (1928) (county road commissioners may act within their sphere of authority under 19 V.S.A. while at the same time the court system is hearing other aspects of 19 V.S.A. which are within the court's sphere.) The Board denied Petitioner the legislatively mandated hearing before the Board when it dismissed Petitioner's case claiming that the Vermont Supreme Court's "rulings, affirming the road maintenance agreement reached by all parties, left the board with nothing to consider." Board letter dated September 23, 2005. PC 240. App. 14. As explained above, there is no valid "road maintenance agreement reached by all parties." The agreement reached by all parties was for the trial to be reopened if Cavendish failed to fulfill certain conditions by August 14, 2003—which is precisely what happened. The errors of this litigation are that the Vermont judicial system, in its efforts to benefit and protect Cavendish, ANR and VAST, turns a blind eye to the actual facts and fails to apply the proper law and thereby enables, facilitates and provides cover for Cavendish's continuing hurtful actions against Petitioner.

REASONS FOR GRANTING THE WRIT

In Petitioner's earlier Petition for Writ of Certiorari in *Bidgood I*, Petitioner explained how the Vermont Supreme Court's opinion was in conflict with opinions of this Court, in conflict with opinions of the First, Second, Third and Fourth Circuit Court of Appeals and in conflict with the Vermont Supreme Court's own opinions. These conflicts remain and their improper treatment in *Bidgood I* continues to negatively affect Petitioner's claims in *Bidgood II*.

Additionally, the Vermont Supreme Court's opinion is in conflict with the New Jersey Supreme Court.

The Vermont Supreme Court's opinion in *Bidgood I*, holding that Petitioner was required to have filed his request to reopen by the last day of the conditional settlement period rather than having mailed the request by this date, conflicts with the holdings of the Second Circuit Court of Appeals in *Cappillino* (mailing of letter to the court within the settlement period is the sufficient and proper manner to request the reopening of the trial) and *Muze* (same).

The Vermont Supreme Court's opinion in *Bidgood I*, holding that ambiguous conditional Orders of Dismissal, (Orders which do not specify the manner as to how the Petitioner is to request the reopening of the trial, as they merely state: "with leave to reopen within ninety (90) days if the conditions set forth in paragraphs 12 and 13 of the Stipulation for Settlement are not satisfied") will nonetheless be given prejudicial effect and thereby prevent a hearing of the merits, conflicts with the holdings of the Second and Fourth Circuit Courts of Appeal. *See Muze* at 495 ("dismissals for ... ambiguities in pleadings are not favored, we should similarly disfavor dismissal where the District Court's order does not include the language customarily used ....") and *Choice Hotels* at 471 (due process dictates judicially-imposed conditions must be explicit and clear "because prejudicial dismissals for failure to meet the court's procedural conditions raise constitutional due process concerns, we should construe Rule 41(a)(2) to ease these concerns by requiring explicit and clear notice to plaintiffs when their failure to meet the court's conditions will result in prejudicial dismissal.").

The Vermont Supreme Court's opinion in *Bidgood I*, holding that the trial court may refuse to reopen the trial based on an application of V.R.C.P. 60(b)(6), conflicts with the First Circuit Court of Appeals holding in *Kinan* at 33 ("A conditional dismissal order is not an appealable final judgment ... [and therefore] the strictures of Rule 60(b) do

not apply. It appears that the good cause requirement in this context is less stringent than the showing required in the Rule 60(b) context.").

The Vermont Supreme Court's opinion in *Bidgood I*, holding that the trial court may analyze Petitioner's perceived late request to reopen under V.R.C.P. 60(b)(6), conflicts with this Court's holding in *Pioneer Investment Services* at 393 (Rules 60(b)(1) and 60(b)(6) "are mutually exclusive") and in conflict with the Third Circuit Court of Appeals holding in *In re Cendent Corp. Prides Litigation* at 182 ("[T]he District Court should properly have entertained an analysis of the factors constituting 'excusable neglect' [under Rule 60(b)(1)] to determine whether [the movant] had met them. To fail to do so is a failure on the part of the District Court to properly apply the law to the facts of this case and provides grounds for reversal on the basis of abuse of discretion.").

The Vermont Supreme Court's opinion in *Bidgood I*, holding that under the conditional Orders of Dismissal, (which are not a final judgment) Petitioner was required to have filed his request to reopen by the last day of the settlement period rather than having mailed the request by this date, conflicts with the holdings of previous opinions of the Vermont Supreme Court. *See Derosia v. Liberty Mut. Ins. Co.*, 155 Vt. 178 (1990) (motion to alter or amend a final judgment is timely when mailed within 10 days after judgment and filed with the court 11 days after the judgment) and *Fournier v. Fournier*, 169 Vt. 600 (Mem. 1999) (same). A request to reopen a conditional dismissal order that has failed cannot be held to a more stringent requirement than a final judgment.

After the events of the earlier litigation, the Vermont Supreme Court recently had the opportunity to set the record straight on the proper manner on how an affected litigant is to implement a conditional Order of Dismissal's provision that provides for reopening the trial upon the adversary's failure of a necessary condition. When the Vermont

Supreme Court amended certain V.R.C.P., it could have used the occasion to also provide language on the proper method on how to reopen a trial provided by conditional Orders of Dismissal, but chose not to do so. *See Order Promulgating Amendments to the Vermont Rules of Civil Procedure and the Vermont Rules of Appellate Procedure*, Vermont Supreme Court, October Term, 2006. (Vermont Supreme Court amending various V.R.C.P. to conform them with the Fed. R. Civ. P.). Perhaps the most relevant aspect of these revisions to Petitioner's case, is the Vermont Supreme Court's action in amending V.R.C.P. 5(e) by adding the following text: "**Filing with the court defined**. ... Filing with the clerk may be accomplished by delivery or by sending the papers by ordinary first-class mail ... provided that filing by mail ... shall not be timely unless the papers are received within the time fixed for filing." However, even if this language had been in force during the earlier litigation, it would not have controlled Petitioner's request to reopen the trial because the Petitioner was never notified that the request to reopen had to be filed by any date certain. Viewed properly in relation to Petitioner's case, this amendment illustrates the type of language that should have been in the conditional Orders of Dismissal to notify the Petitioner on the proper method of how to request the reopening of the trial. The Vermont Supreme Court expects the Petitioner to resort to a crystal ball and derive therefrom the proper method on how to reopen the trial. This is perplexing because when the Vermont Supreme Court itself had the legitimate opportunity to describe the method on how to reopen a trial upon the failure of a conditional Order of Dismissal it chose not to do so. Also relevant to Petitioner's case is the Vermont Supreme Court's amendment of 1) V.R.C.P. 50(b), changing the rule to read: "Such a motion may be renewed by filing not later than 10 days after entry of judgment", where previously the requirement was to have served the motion not later than 10 days after entry of judgment and 2) V.R.C.P. 59(b) (similar change). The new

amendments effectively overrule *Derosia* and *Fournier*. The Court has been clear that it will grant certiorari when a case raises "important questions as to the proper application of the Federal Rules of Civil Procedure ...." *Societe Internationale v. Rogers*, 357 U.S. 197, 203 (1958). The Court has also stated "that the spirit and inclination of the rules favored decisions on the merits, and rejected an approach that pleading is a game of skill in which one misstep may be decisive." *Schiavone v. Fortune*, 477 U.S. 21, 27 (1986). In Petitioner's case, the Vermont Supreme Court has no rule on how to request the reopening of a trial, but nonetheless holds Petitioner in violation of that unstated rule. This cannot be considered justice or in compliance with the manner of fair play that the Court oversees in setting out the proper application of the rules of procedure which the state courts must follow.

In the present case, Petitioner argues that the Vermont Supreme Court's opinion *Bidgood I*, holding that Petitioner is not required to be given notice of the procedure on how to request to reopen the trial when that method is not described in any publicly available document, conflicts with the holdings of this Court. *See Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1 (1978) and *City of West Covina* at 242 ("In requiring notice ... [Court] relied ... on the fact that the administrative procedures at issue were not described in any publicly available document."). Again, the Vermont Supreme Court expects the Petitioner to resort to a crystal ball and try to derive therefrom the proper method on how to reopen the trial. This is not a fair way to run a judicial system and the Court must prevent the Vermont Supreme Court from trampling on Petitioner's due process rights in such a callous manner.

Also in the present case, Petitioner argues that the Vermont Supreme Court's opinion in *Bidgood I*, holding that Petitioner is not required to be given notice of the procedure on how to request to reopen the trial when that method is not described in any publicly available document, conflicts with

previous opinions of the Vermont Supreme Court. *See Town of Randolph v. White*, 166 Vt. 280 (1997) (discussing and applying *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 314 (1950), *Memphis Light* at 13 and *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976)). "We have found no case in which a court has upheld a notice of a significant property deprivation that does not inform the parties *how* they may challenge the grounds for such deprivation." *White* at 286 emphasis added. "To meet due process requirements, the notice ... must inform the defendant *how* to contest the decision." *White* at 287 emphasis added. "[W]here notice to landowner of proposed road closing failed to advise that claims for damages must be filed on or before hearing date, the board did not have jurisdiction on issue of damages, and failure to file timely appeal of board's decision did not foreclose claim." *White* at 287. Petitioner was never informed that the request to reopen had to be filed by August 14, 2003 and there is no procedure that exists that Petitioner could have consulted to determine this requirement. In fact, as set out above, the requirements are that the request to reopen must be mailed by August 14, 2003—which is precisely what Petitioner did.

The Vermont Supreme Court's opinion in *Bidgood I*, holding that Petitioner was required to have filed the request to reopen the trial by the last day of the 90 day period provided for by the conditional Orders of Dismissal, rather than having mailed the request by this date, conflicts with the holding of the New Jersey Supreme Court in *Ferreira v. Rancocas Orthopedic Assocs.*, 178 N.J. 144, 149 (2003) (after filing of complaint and answer, "*statute imposes a set of procedural requirements in order for a plaintiff to maintain ... action*", requiring plaintiff to provide defendant with affidavit of merit within statutorily defined deadline, but when deadline is missed, court will fashion equitable remedy to maintain action) (emphasis added). In the *Bidgood* litigation, with no defined procedural requirements, the Vermont Supreme Court nonetheless "determines" that

Petitioner is in violation of the undefined requirement. This is quite simply an egregious mishandling of Petitioner's cause. As the New Jersey Supreme Court noted, the legislative purpose in setting out procedural requirements was not intended to "create a minefield of hyper-technicalities in order to doom innocent litigants possessing meritorious claims." *Id.* at 151.

The only proper course for this litigation is for the trial to be reopened in order for Petitioner to have his day in court. *See Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 87 (1988) (when litigant is deprived of due process of law only "wip[ing] the slate clean ... would have restored the [litigant] to the position he would have occupied had due process of law been accorded to him in the first place.").

CONCLUSION

As demonstrated above, it is imperative that someone looks over the Vermont court system. No other citizen should have to bear the burdens brought upon the Petitioner by the reprehensible nature of the actions of the Vermont court system. The Court should grant this petition for a writ of certiorari and utilize Petitioner's situation to instruct the lower courts on the proper application of the rules of civil procedure and the proper treatment of Dismissal Orders, such that when one litigant fails to comply with its obligations under a court's Dismissal Order the other litigant may properly exercise his right to reopen the trial and have his day in court—all without being cast as the Town Fool and without having his reputation smeared by the very court in which he is seeking justice. Otherwise, Orders of the Vermont court system, supposedly the very essence of justice, are not worth the paper they are written on.

Respectfully submitted, November 9, 2007

Paul F. Bidgood
14 Fairbanks Street
West Boylston, MA 01583
(508) 835-8846

APPENDIX

TABLE OF CONTENTS

Decision and Order of
The Supreme Court of Vermont
Re: Affirming District Court's Decision
Entered May 16, 2007.....1

Decision and Order of
The Superior Court of Windsor County
Re: Affirming Vermont Transportation Board's
Dismissal of case
Entered September 14, 2006.....7

Decision of
The Vermont Transportation Board
Re: Dismissing case
Entered September 23, 2005.....14

Decision and Order of
The Vermont Transportation Board
Re: Denial of Cavendish's Motion to Dismiss,
Ordering a Hearing on the Merits, but staying the
Hearing on the Merits until after the Vermont
Supreme Court issues its Decision in the then
pending *Bidgood I* litigation
Entered December 29, 2004.....15

Order of
The Vermont Supreme Court
RE: Denying Motion for Reargument
Entered June 20, 2007.....19

Constitutional Provisions, Statutes and Rules.....20

Decision and Order of
The Supreme Court of Vermont in
Bidgood I
Re: Affirming District Court's Dismissal
Entered September 15, 2005.....29

Motion to
The Vermont Transportation Board
Re: excerpt from Cavendish Motion to Dismiss
Dated March 4, 2004.....36

Vote of
Town of Cavendish
Re: Excerpt from Vote of Cavendish Selectboard
Reclassifying TH #36, Old Bailey Hill Road
Recorded November 12, 2003.....37

Order of
The Superior Court of Windsor County in
Bidgood I
Re: Denial of Plaintiff Paul F. Bidgood's
Motion to Resume Trial
Filed November 10, 2003.....38

Order of
The Superior Court of Windsor County in
Bidgood I
Re: Denial of Plaintiff Paul F. Bidgood's
Motion to Inform the Court that
Plaintiff Rescinds Settlement
Filed October 16, 2003.....40

Motion to
The Superior Court of Windsor County in
Bidgood I
Re: Plaintiff Paul F. Bidgood's Motion to
Resume Trial

Dated September 30, 2003.....42

Notice of
Town of Cavendish
Re: Excerpt from Notice of Hearing to Paul F. Bidgood of Cavendish's consideration of Reclassifying TH #36, Old Bailey Hill Road
Dated September 11, 2003.....46

Receipt from clerk of
The Superior Court of Windsor County in
Bidgood I
Re: Plaintiff Paul F. Bidgood's letter and Motion to Inform the Court that Plaintiff Rescinds Settlement
Dated August 18, 2003.....47

Motion to
The Superior Court of Windsor County in
Bidgood I
Re: Plaintiff Paul F. Bidgood's Motion to Inform the Court that Plaintiff Rescinds Settlement
Dated August 14, 2003.....48

Conditional Order of Dismissal from
The Superior Court of Windsor County in
Bidgood I
Re: Conditional Dismissal of Plaintiff Paul F. Bidgood's underlying claims and providing for 90 days to reopen the trial
Filed May 16, 2003.....51

ENTRY ORDER

[2007 Vt. LEXIS 183, 927 A.2d 790]

SUPREME COURT DOCKET NO. 2006-426

MAY TERM, 2007

Paul Bidgood	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Superior Court
	}	
Town of Cavendish	}	
	}	DOCKET NO. 85-2-06 Wrcv
		Trail Judge: William D. Cohen

[ENTERED MAY 16, 2007]

In the above-entitled cause, the Clerk will enter:

¶1. Appellant Paul Bidgood appeals pro se from a superior court order affirming the Vermont Transportation Board's dismissal of his petition challenging the Town of Cavendish's reclassification of a Town highway. Appellant contends the court improperly: (1) perpetuated errors committed by the trial court and this Court in prior litigation between the parties; and (2) affirmed the Board's sua sponte dismissal. We affirm.

¶2. This is the second appeal to come before the Court in this matter. Most of the pertinent facts are set forth in Bidgood v. Town of Cavendish, 2005 VT 64, ¶¶ 2-4 (mem.). In brief, the dispute centers on appellant's efforts to

obtain winter access to his property, which fronts on a Town highway known as the Old Bailey Road. In the earlier litigation, appellant filed two actions challenging the Town's reclassification of the road from class 3 to class 4, one an appeal from the road commissioner's reclassification, and the other a civil suit seeing declaratory relief and tort damages against the Towns of Chester and Cavendish, a town manager, and the intervenor Agency of Natural Resources.[1] The actions were consolidated for trial.

¶3. During trial, the parties reached a comprehensive settlement of all contested matters. Appellant was represented by counsel during the negotiations and signed the stipulated settlement, which the court incorporated into an order of dismissal in May 2003. The order dismissed the case with prejudice "with leave to reopen within ninety (90) days" if certain conditions were not satisfied. Id. ¶ 3. In late August 2003, after the ninety-day deadline had passed, appellant moved pro se to rescind the settlement agreement, and subsequently moved to resume trial. Treating the motion to rescind as a motion for relief under Vermont Rule of Civil Procedure 60(b), the court found no basis for relief and denied the motions. See Johnston v. Wilkins, 2003 VT 56, ¶ 8, 175 Vt. 567 (mem.) (stipulated settlement incorporated into a final judgment can be disturbed only pursuant to the procedures and criteria set forth under V.R.C.P. 60(b)).

¶4. On appeal to this Court, appellant claimed that the trial court erred in denying his motions because the court in the underlying action lacked subject matter jurisdiction to accept the settlement and dismiss the case. We held, however, that most of appellant's claims amounted

---

[1] The Agency of Natural Resources, Department of Forests, Parks and Recreation became involved in the actions because a state-forest highway that is closed in winter connects with the road in question.

to a collateral attack on the judgment of dismissal which were barred by the doctrine of res judicata. Bidgood, 2005 VT 64, ¶¶ 6-7; see Johnston, 2003 VT 56, ¶ 8 (stipulated settlement incorporated into a final judgment dismissing the case "has the preclusive effect of a final judgment"). We also specifically rejected appellant's claim that the court lacked jurisdiction because it had failed to follow certain procedures relating to road reclassifications. Bidgood, 2005 VT 64, ¶ 10. As to the request for relief, we noted that appellant's motion to rescind the agreement was not filed within the ninety-day deadline, and that the settlement and judgment therefore remained binding. Id. ¶ 8. We further found that appellant had adduced no evidence that the agreement was the result of duress or unequal bargaining strength, recalling that appellant was represented by counsel during trial and the settlement negotiations. Accordingly, we held that "the settlement agreement controls" and that the trial court properly denied the motion for relief from judgment. Id. ¶ 10.

¶5. While appellant was pursuing the claims which resulted in the first appeal, he was also seeking to overturn one of the specific contingencies set forth in the settlement agreement itself. The agreement provided that, in return for appellant's dismissal of the complaints, the Town would warn a reclassification hearing to convert the road in question from class 4 (which appellant acknowledged to be its current status) to a three-season class 3 highway.[2] The agreement expressly stated that the Town could not "guarantee the results of such hearing," and made the stipulation "contingent on a final decision (including any

---

[2] Although towns must generally maintain class 1, 2 and 3 highways "in good and sufficient repair during all seasons of the year," they have the discretion to determine whether class 2 or 3 highways "should be plowed and made negotiable during the winter." 19 V.S.A. § 310(a); see also 19 V.S.A. § 302(a)(3)(B) (same).

decision on appeal) reclassifying [the road] to a three-season Class 3 road."

¶6. The Town selectboard subsequently held the required hearing and voted to reclassify the road as contemplated in the agreement. Appellant opposed the reclassification, however, and appealed the selectboard's decision to the Vermont Transportation Board. The Town moved to dismiss, but the Board stayed any decision pending this Court's resolution of the first appeal. Following our decision, the Town renewed its motion, which the State joined. The Board then voted to dismiss the appeal based upon this Court's decision "affirming the ... agreement reached by all parties." The superior court affirmed the Board's order, ruling that most of appellant's claims were rearguments of issues resolved in the earlier appeal, and were therefore barred by the doctrine of res judicata. The court further ruled that appellant was contractually barred from challenging the Town's reclassification of the road from class 4 to three-season class 3, as called for in the stipulated settlement, on the basis that he was prohibited by the implied covenant of good faith and fair dealing from acting to undermine the settlement agreement. This appeal followed.

¶7. Appellant's claims consist largely of a recitation, as he puts it, of "errors committed by the trial court and by the Supreme Court in the prior litigation." The court here correctly ruled, however, that the elements of res judicata were satisfied and that appellant was therefore barred from relitigating claims that were, or properly could have been, litigated in the earlier proceedings. See Kellner v. Kellner, 2004 VT 1, ¶ 8, 176 Vt. 571 (mem.) (res judicata bars litigation of a claim or defense that was, or could have been, raised if there exists a final judgment in a former litigation in which the parties, subject matter, and causes of action are identical or substantially identical).

¶8. Appellant also contends the court erred in concluding that he was contractually barred from challenging the reclassification provided for in the settlement agreement. The trial court was correct in observing, however, that Vermont law implies in every agreement an implied covenant of good faith and fair dealing to refrain from any actions that would undermine either party's right to receive the benefits of the agreement. Downtown Barre Dev. v. C & S Wholesale Grocers, Inc. 2004 VT 47, ¶ 18, 177 Vt. 70. This principle has been widely recognized as barring a party from undertaking any action that would interfere with the implementation of a settlement agreement. See, e.g., Kaiser v. Royal Ins. Co. of Am., 89 P.3d 740, 742 (Alaska 2004); Envtl. Control, Inc. v. City of Santa Fe, 38 P.3d 891, 898 (N.M. Ct. App. 2001); Ochal v. Television Tech. Corp., 809 N.Y.S. 2d 604, 605 (N.Y. App. Div. 2006). We thus agree with the trial court that, having agreed to dismiss his actions in return for the Town's undertaking to reclassify the road from class 4 to three-season class 3, appellant was barred from interfering with implementation of the settlement by opposing the reclassification to which he had expressly agreed. Although appellant notes that the agreement was expressly "contingent on a final decision (including any appeal) reclassifying the road," we do not construe this as authorizing appellant to challenge on appeal the reclassification to which he had assented. Nor, as appellant claims, did the agreement improperly bind the Town selectboard, as it expressly recognized that the Town could not "guarantee" the result of the selectboard hearing, and the agreement was binding only if the selectboard enacted the reclassification in question. Accordingly, we find no basis to disturb the judgment.

Affirmed.

BY THE COURT:

/s/
Denise R. Johnson, Associate Justice

/s/
Marilyn S. Skoglund, Associate Justice

/s/
Brian L. Burgess, Associate Justice

STATE OF VERMONT
WINDSOR COUNTY, SS.

Paul F. Bidgood,	**) Windsor Superior Court**
Appellant	**) Docket No. 85-2-06 Wrcv**
	)
v.	**)**
	) Appeal from: Vermont
Town of Cavendish,	**) Transportation Board**
Appellee	**) No. T.B. 215 (2003),**
and	**) Dismissal on September 15, 2005**
Agency of Natural	**) (reported September 23, 2005)**
Resources, Department)	
of Forests, Parks and)	
Recreation, *Intervenor*)	

[ENTERED SEPTEMBER 14, 2006]

DECISION AND ORDER REGARDING:
TOWN'S MOTION TO DISMISS
and
INTERVENOR'S MOTION TO DISMISS

¶1. Paul F. Bidgood appeals a dismissal decision by the State Transportation Board. He had petitioned the Board for review of a decision by the Town of Cavendish Selectboard not to provide winter maintenance on Bailey Hill Road (TH # 36). The Board voted to dismiss Mr. Bidgood's appeal, based on a reported decision by the Vermont Supreme Court in *Bidgood v. Town of Cavendish*, 2005 VT 64, 16 Vt.L.W. 156 (June 8, 2005).[1] The case is before the Superior Court

[1] The Supreme Court issued its initial Opinion on June 8, 2005 (16 Vt.L.W. 156). The Court later issued a revised Opinion on September 15, 2005 (16 Vt.L.W. 327), to reflect the participation of Superior Court Judge Hayes, who was specially assigned to sit on the panel. Thus the Court issued its decision on June 8, 2005, and did not alter the substance of the decision in its later opinion.

for review, on the record, under 19 V.S.A. § 5(c). Mr. Bidgood represents himself *pro se*. Attorneys Philip C. Woodward and Marikate E. Kelley represent the Town of Cavendish. Assistant Attorney General Clifford Peterson represents the Intervenor, the Vermont Agency of Natural Resources, Department of Forests, Parks and Recreation.

¶2. The question presented is whether Mr. Bidgood may appeal the Selectboard's recent reclassification decision, after he agreed to the very reclassification that he now opposes, and after the Supreme Court affirmed the Superior Court's denial of his motion to rescind the settlement agreement and reopen the underling cases. The issue of winter maintenance on Bailey Hill Road was the primary focus of the earlier litigation, in which Mr. Bidgood and others sought year-round access to their property. In Docket No. 29-1-99 Wrcv, Mr. Bidgood challenged the Town's action of reclassifying the road from Class 3 to Class 4. In Docket No. 436-9-99 Wrcv, he pursued various claims against these appellees and others for failing to provide the winter access he desired. The parties to the earlier litigation entered into a comprehensive Stipulation of Settlement on April 4, 2003, and they amended some parts of their agreement on May 12 and 13, 2003. Superior Court Judge Alan W. Cook then approved the terms of the settlement agreement by issuing two Orders of Dismissal on May 16, 2003.

¶3. Within the context of the present litigation, the pertinent terms of the Amended Stipulation of Settlement (i.e. the original agreement dated April 4, 2003, as amended on May 12 and 13, 2003) are as follows:

> ¶ 3. The Cavendish Selectboard will warn a reclassification hearing to convert T.H. 36 (the portion of T.H. 36 described here is that portion of the highway from the State forest highway to the

> Bidgood dwelling house) to a Class 3 – 3 season maintenance – town highway. For purposes of this Stipulation, Plaintiffs agree that T.H. 36 is a Class 4 town highway at present. The Cavendish Selectboard cannot guarantee the results of such hearing.
>
> ¶ 13. This stipulation is also contingent on a final decision (including any decision on appeal) reclassifying TH 36 to a three-season Class 3 road.
>
> ¶ 17. The companion case involving an appeal of reclassification [No. 29-1-99 Wrcv] shall also be dismissed w/ prejudice at the time the case captioned above [No. 436-9-99 Wrcv] is dismissed.

¶4. On review of the Superior Court's denial of Mr. Bidgood's attempts to reopen the litigation, the Vermont Supreme Court held that the settlement agreement is part of the final judgment of the court, and that its terms are final and binding, as a matter of *res judicata*. The Supreme Court explained its decision as follows:

> ¶ 6. We affirm because the doctrine of res judicata precludes Mr. Bidgood from collaterally attacking the validity of the order. "Res judicata bars litigation of a claim or defense if there exists a final judgment in former litigation in which the parties, subject matter, and causes of action are identical or substantially identical." *Kellner v. Kellner*, 2004 VT 1, ¶ 8, 176 Vt. 571, 844 A.2d 743 (mem.) (quotations omitted). Res judicata also bars parties from litigating claims that the parties should have raised in a previous proceeding. *Id.* A settlement agreement that is incorporated into a final judgment can be disturbed pursuant only to the procedures set forth in Vermont Rule of Civil Procedure 60(b). *Id.* ¶¶ 6, 8

(discussing and relying on *Johnston v. Wilkins*, 2003 VT 56, 175 Vt. 567, 830 A.2d 695 (mem.)).

¶ 7. In the present case, the settlement agreement was incorporated into a final order. The parties are identical. The subject matter – reclassification and maintenance of a town highway – was central to the litigation that the settlement agreement resolved. Thus, Mr. Bidgood's renewed claims are barred by res judicata, and the final order controls.

Bidgood v. Town of Cavendish, 2005 VT 64, ¶¶ 6-7, 16 Vt.L.W. 327.

¶5. The instant case is an appeal of the dismissal decision by the State Transportation Board. The Board's decision was to dismiss Mr. Bidgood's appeal of a decision by the Town of Cavendish Selectboard not to provide winter maintenance on Bailey Hill Road. More specifically, the Town of Cavendish had converted the road from Class 4, to Class 3 with three-season maintenance, under 19 V.S.A. § 302(a)(3)(B). Apparently Mr. Bidgood seeks to require the Town of Cavendish to convert the road to Class 3 with all-season maintenance.

¶6. The Town and the Intervenor have both sought dismissal. The Town filed a "Motion to Dismiss" on the grounds of res judicata, collateral estoppel, equitable estoppel, waiver and contract. The Intervenor, the Department of Forests, Parks and Recreation, has also asked for dismissal of the appeal on the grounds of res judicata. The Court's understanding is that the Town and Intervenor actually seek an Order affirming the dismissal by the Transportation Board.

¶7. Mr. Bidgood has set forth a variety of theories in opposition to the motions. In applying the Town's grounds for dismissal to Mr. Bidgood's theories, it helps to separate the issues into those that were decided in the previous litigation and those that were not.

¶8. Many of Mr. Bidgood's arguments attempt to reopen the earlier cases. One of those earlier cases involved Mr. Bidgood's appeal of the Town's action of reclassifying the road from Class 3 to Class 4. Judge Cook's dismissal of that case essentially upheld the road reclassification to Class 4. In ¶ 3 of the Settlement Agreement, the parties agreed that T.H. 36 was Class 4. Later that year, Mr. Bidgood moved to reopen the earlier litigation, but Judge Teachout denied his motion, and the Supreme Court later affirmed that denial. Therefore, the Class 4 designation was clearly established as a result of the earlier litigation.

¶9. Mr. Bidgood cannot use the instant case to reopen the earlier litigation. He cannot continue to question the Town's decision to reclassify T.H. 36 as Class 4, nor can he continue to question Judge Teachout's decision to deny his motion to reopen the case. Given the Supreme Court's decision dated June 8, 2005, those issues are settled, as a matter of res judicata.

¶10. Mr. Bidgood also seeks review of the Town's decision (on or about November 12, 2003) to reclassify T.H. 36 as a Class 3, three-season road. As explained above, the Town's decision upgraded the road from Class 4. Nevertheless, Mr. Bidgood appealed to the Transportation Board, seeking review of the Town's decision not to provide winter maintenance.

¶11. Mr. Bidgood argues correctly that the Town's reclassification decision (in November 2003) was not part of the earlier litigation. Although both involved reclassification

of T.H. 36, they occurred at different times and under different circumstances. Even though the earlier litigation confirmed a reclassification to Class 4, that result did not preclude a further reclassification in 2003. See *In re Bill*, 168 Vt. 439, 445 (1998) (courts do not apply common law rules of res judicata to highway proceedings).

¶12. Here, however, the earlier litigation resulted in a Settlement Agreement including a provision that the Town would take steps to reclassify T.H. 36 to a Class 3, three-season maintenance town highway. The Supreme Court's decision confirmed that the Settlement Agreement is a valid and binding contract. The Settlement Agreement included a provision calling for the Town to take steps to reclassify T.H. 36 from Class 4 to Class 3 with three-season maintenance. The Settlement Agreement also included a provision that the stipulation was contingent on a final decision (including any decision on appeal) reclassifying T.H. 36 to a three-season Class 3 road.

¶13. Given these provisions, the Court agrees with the Town that Mr. Bidgood's appeal of the reclassification decision violates the spirit of the Settlement Agreement. After agreeing to settle the litigation, Mr. Bidgood's pursuit of his appeal could upset the contingency set forth in ¶ 13. His actions violate the covenant of good faith and fair dealing that exists within every contract.

> An underlying principle implied in every contract is that each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement. *Shaw v. E. I. Dupont de Nemours & Co.*, 126 Vt. 206, 209, 226 A.2d 903, 906 (1966). The implied covenant of good faith and fair dealing exists to ensure that parties to a contract act with "faithfulness to an agreed common purpose and consistency with the justified expectations of the

other party." Restatement (Second) of Contracts § 205 comment a (1981).

Carmichael v. Adirondack Bottled Gas Corp., 161 Vt. 200, 208 (1993). In this case, Mr. Bidgood's pursuit of the appeal undermines the Town's right to receive the benefits of their agreement. The Town has attempted to fulfill the terms of the agreement. Based on the covenant of good faith and fair dealing, Mr. Bidgood is contractually barred from undermining the agreement by pursuing this appeal.

ORDER

¶14. The decision by the State Transportation Board to dismiss Mr. Bidgood's appeal is AFFIRMED. The terms of his earlier settlement agreement preclude him from objecting to the Town of Cavendish Selectboard's decision to classify and maintain Bailey Hill Road as a three-season Class 3 highway.

Dated at Woodstock, Vermont, this 13th day of Sept, 2006.

/s/
Hon. William D. Cohen,
Presiding Judge

VERMONT TRANSPORTATION BOARD

118 State St.
Montpelier, VT 05602
802 828-2942 (fax: 2660)
glenn.gershaneck@state.vt.us

September 23, 2005

Paul F. Bidgood
14 Fairbanks St.
West Boylston, MA 01583

Dear Mr. Bidgood:

The state Transportation Board, meeting September 15, voted to dismiss your appeal, based on findings in the recent Supreme Court rulings in your case. The rulings, affirming the road maintenance agreement reached by all parties, left the board with nothing to consider.

Cordially,

/s/
Glenn Gershaneck
Executive secretary

Cc: Caroline S. Earle, Assistant Attorney General
Marikate E. Kelley, Attorney, Town of Cavendish

STATE OF VERMONT
TRANSPORTATION BOARD

In re Request of Paul F. Bidgood for Review)	
of a Decision by the Cavendish Selectboard)	T.B.
Not to Provide Winter Maintenance of Old)	215 (2003)
Bailey Hill Road (TH #36) a Class 3 Town)	
Highway in the Town of Cavendish)	

[ENTERED DECEMBER 29, 2004]

ORDER

The above captioned matter came on for a hearing before the Transportation Board at 1:30 P.M. on October 14, 2004 at the Transportation Board Room, 5th Floor, National Life Building, Montpelier, Vermont 05620. Transportation Board Chairman John Booth presided as Hearing Officer. Also present were Board Members, Honorables Judith Bettis, Joan Hungerford, Rene Blanchard, Virgilio Bonacorsi, William Cimonetti, Betty Ferraro. Representing the Town of Cavendish was Mari Kate Kelley, Esq. The Agency of Natural Resources appeared and was represented by its attorney, Caroline S. Earle, Esq. Paul F. Bidgood appeared and represented himself.

After the oral arguments were presented by the parties, the Board, after due deliberation, makes the following order:

1) Respondent's Motion to Dismiss Bidgood's petition before the Board as argued on those grounds set forth on items 1-4 of the Notice of Hearing attached hereto is hereby denied. The Board shall take up the merits of Mr. Bidgood's petition at a later date to be determined pending a

decision by the Vermont Supreme Court in an appeal of the underlying matter.

2) It is the Board's position that balancing all of the equities involved and exercising its discretion, applying its sense of fairness and judgment, Mr. Bidgood may be allowed his appeal to the Board. However, the Board acknowledges that any decision it renders as a result of the merits hearing may necessarily be open to challenge depending on the outcome of the pending Vermont Supreme Court appeal. In order to avoid duplicity of actions and uncertainties of outcomes, the Board therefore stays further action on Paul Bidgood's petition.

Dated at Montpelier, Vermont this 29 day of December, 2004

STATE TRANSPORTATION BOARD

BY /s/
John Booth, Hearing Officer and Chairman

STATE OF VERMONT
TRANSPORTATION BOARD

In re Request of Paul F. Bidgood for Review)	
of a Decision by the Cavendish Selectboard)	T.B.
Not to Provide Winter Maintenance of Old)	215 (2003)
Bailey Hill Road (TH #36) a Class 3 Town)	
Highway in the Town of Cavendish)	

[ENTERED SEPTEMEBR 23, 2004]

NOTICE OF HEARNG

Please take notice that the Transportation Board or its designated hearing officer will conduct a hearing at 1:30 P.M. on October 14, 2004, at the Transportation Board Room, 5th Floor, National Life Drive, Montpelier, Vermont 05620.

The purpose of the hearing is to hear oral argument on the Motion to Dismiss and Memorandum of Law filed by the Town of Cavendish (dated March 4, 2004 and received by the Board on March 8, 2004), which raises these issues:

1. Whether petitioner Paul F. Bidgood waived his right to appeal Town's reclassification by virtue of entering into a settlement agreement which contemplated the reclassification of TH #36 to a Class 3 Town Highway which would not receive winter maintenance?

2. Whether the doctrine of equitable estoppel precludes petitioner Paul F. Bidgood from pursuing an appeal to the Transportation Board which is inconsistent with the settlement agreement?

3. Whether the doctrine of collateral estoppel precludes petitioner Paul F. Bidgood from pursuing an appeal to the Transportation Board which is inconsistent with the settlement agreement?

4. Whether petitioner Paul F. Bidgood should be precluded from pursuing this appeal to the Transportation Board because he has elected other remedies for his grievance?

The Board reminds the parties that the Board has received their written submissions and that the scope of this hearing is limited to the motion to dismiss. This is not a hearing on the merits of the reclassification appeal.

Dated at Montpelier, Vermont this 23 day of September, 2004.

STATE TRANSPORTATION BOARD

BY

/s/
Its Attorney

ENTRY ORDER

[2007 Vt. LEXIS 185, 927 A.2d 791]

VERMONT SUPREME COURT DOCKET NO. 2006-426

JUNE TERM, 2007

PAUL BIDGOOD*	} APPEALED FROM:
	} Windsor Superior
v.	}
	} DOCKET NUMBER: 85-2-06 Wrcv
TOWN OF CAVENDISH	}
	}

[ENTERED JUNE 20, 2007]

In the above-entitled cause, the Clerk will enter:

Appellant's May 30, 2007 motion for reargument fails to identify points of law or fact misapprehended or overlooked in this Court's May 16, 2007 decision; accordingly, the motion is denied.

[ ] Publish

[X] Do Not Publish

BY THE COURT:

/s/
Denise R. Johnson, Associate Justice

/s/
Marilyn S. Skoglund, Associate Justice

/s/
Brian L. Burgess, Associate Justice

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Earlier Litigation (and still impacting present litigation):

CONSTITUTIONAL PROVISIONS

First Amendment
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

Federal Statutes

23 U.S.C. § 206
Uses not permitted. A State may not obligate funds apportioned to carry out this section for (1) condemnation of any kind of interest in property. 23 U.S.C. § 206(g)(1).

Cooperation by private persons. (A) Written assurances. As a condition of making available apportionments for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the land will cooperate with the State and participate as necessary in the activities to be constructed. 23 U.S.C. § 206(h)(4)(A).

(B) Public access. Any use of the apportionments to a State to carry out this section on privately owned land must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by the apportionments. 23 U.S.C. § 206(h)(4)(B).

42 U.S.C. § 1983
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . 42 U.S.C. § 1983.

42 U.S.C. § 1988
In any action or proceeding to enforce a provision of sections ... 1983 ... of this title ... the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs .... 42 U.S.C. § 1988(b).

Vermont Statutes

10 V.S.A. § 441
The development, operation, and maintenance of the Vermont trails system is declared to be a public purpose and in this context, the agency of natural resources together with other governmental agencies is authorized to spend public funds for such purposes and to accept gifts and grants of funds, property, or property rights from public or private sources to be used for such purposes where permission is granted. 10 V.S.A. § 441(c).

23 V.S.A. § 3201
'Trails maintenance assessment' means a permit issued by the Vermont Association of Snow Travelers, Inc. granting use of Vermont snowmobile trails on public and private land. 23 V.S.A. 3201(7).

23 V.S.A. 3202
A person shall not operate a snowmobile unless registered and numbered by the state of Vermont or other state or province offering registration reciprocity and displays a valid Vermont trails maintenance assessment decal adjacent to the registration decal on the left side of the snowmobile in accordance with this chapter .... 23 V.S.A. § 3202(a).

RULES

Federal Rules of Civil Procedure

Rule 60
On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . . . Fed.R.Civ.P. 60(b)(1).

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... (6) any other reason justifying relief from the operation of the judgment. Fed.R.Civ.P. 60(b)(6).

Vermont Rules of Civil Procedure

Rule 1
They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action. V.R.C.P 1

The rules are based on the Federal Rules of Civil Procedure. Federal cases interpreting the Federal Rules are an authoritative source for the interpretation of identical provisions of the Vermont Rules. V.R.C.P. 1 Reporter's Notes.

Rule 3
A civil action is commenced by filing a complaint with the court, except that in any case where attachment of real or personal property or attachment on trustee process is not to be made, or goods are not to be replevied, an action may be commenced by the service of a summons and complaint. When an action is commenced by filing, summons and

complaint must be served upon the defendant within 60 days after the filing of the complaint. When an action is commenced by service, the complaint must be filed with the court within 20 days after the completion of service upon the first defendant served. If service is not timely made or the complaint is not timely filed, the action may be dismissed on motion, including motion of the court pursuant to Rule 41(b)(1) .... V.R.C.P. 3.

Rule 5
Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney or party's last known address or, if no address is known, by leaving it with the clerk of the court. ... Service by mail is complete upon mailing. V.R.C.P. 5(b).

The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that a judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules. V.R.C.P 5(e).

Rule 6
In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a State or federal legal holiday, or, when the act to be done is the filing of some

paper in court, a day on which weather or other conditions have made the office of the clerk inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. V.R.C.P 6(a).

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period unless the notice or other paper is served by the court. V.R.C.P. 6(e).

Rule 59
A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment. V.R.C.P. 59(e).

Rule 60
On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect .... V.R.C.P. 60(b)(1).

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (6) any other reason justifying relief from the operation of the judgment. V.R.C.P. 60(b)(6).

Present Litigation:

The continuing illicit effects of the Vermont Supreme Court's wrongful treatment of the above provisions, statutes and rules in the earlier litigation along with the Vermont Supreme Court's stance of denying the Petitioner of the Due Process of Law and the following.

Vermont Statutes

3 V.S.A. § 807
The validity or applicability of a rule may be determined in an action for declaratory judgment in the Washington superior court if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question. 3 V.S.A. § 807.

12 V.S.A. § 4721
When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and shall be entitled to be heard. If the statute, ordinance or franchise is alleged to be unconstitutional, the attorney general shall also be served with a copy of the proceeding and be entitled to be heard. 12 V.S.A. § 4721.

19 V.S.A. § 5
Final orders of the board may be reviewed on the record by the superior court pursuant to Rule 74 of the Vermont Rules of Civil Procedure. 19 V.S.A. § 5(c).

The board shall: ... (8) hear and determine disputes involving the decision of a selectboard under subdivision 302(a)(3)(B) or subsection 310(a) of this title not to plow and make negotiable a class 2 or 3 town highway or section of a highway during the winter .... 19 V.S.A. § 5(d)(8).

The board shall have the power to determine and adjudicate all matters over which it is given jurisdiction. 19 V.S.A. § 5(f).

19 V.S.A. § 741
The court shall appoint three disinterested landowners as commissioners, to inquire into the convenience and necessity of the proposed highway, and the manner in which it has been laid out, altered or resurveyed, and, except where a trial by jury is requested, as to the amount of damages sustained by the appellant. 19 V.S.A. § 741.

19 V.S.A. § 742
The commissioners shall give notice to one or more of the selectboard members and to the appellants of the time and place where they will examine the area and hear testimony. After completing their inquiries, they shall make a report to the court. The court may accept or reject the report in whole or in part, and by its order or decree may establish, alter, resurvey or discontinue the highway, and may render judgment for the appellants for any damages as they have severally sustained. 19 V.S.A. § 742.

19 V.S.A. § 971
When a highway or bridge is out of repair or unsafe for travel, any three citizens or taxpayers in the state may give written and signed notice of the insufficiency to the selectmen of the town in which the highway or bridge is situated, setting forth in general terms the location of the highway or bridge and the nature of the insufficiency. If the town neglects for seventy-two hours to respond by either denying the allegation or to commence work upon the highway or bridge, or fails to continue the work in good faith and with reasonable dispatch until the highway or bridge is put in good and sufficient repair, the citizens may file with one of the county road commissioners or the superior court for the county in which the highway or bridge is situated, a

written complaint signed and sworn to, setting forth in general terms the location of the highway or bridge and the nature of the insufficiency. The complainants shall also give the commissioners security by deposit or otherwise for the costs of proceedings under the complaint. 19 V.S.A. § 971.

19 V.S.A. § 976

The clerk shall file the report and enter judgment in favor of the commissioners against the town for the amount named in the report, with costs. However, the aggrieved party may appeal to the superior court by filing with the county clerk within twenty-one days after the judgment has been entered by the clerk, a notice of appeal and a certified copy of the complaint filed with the commissioners and by serving upon the appellee within the twenty-one days, a copy of the notice of appeal, who shall within twenty-one days thereafter, enter his or her appearance. The superior court shall hear the appeal on questions of fact and law and render final judgment. 19 V.S.A. § 976.

ENTRY ORDER

VERMONT SUPREME COURT DOCKET NO. 2003-555

AUGUST TERM, 2005

PAUL BIDGOOD*, ANDREW BIDGOOD and GEORGE BIDGOOD	}	APPEALED FROM: Windsor Superior
v.	}	
	}	DOCKET NUMBER:
TOWN OF CAVENDISH, SELECTMEN OF TOWN OF CAVENDISH, STEARNS, BUSWELL, CHURCHILL, GLIDDEN, GILCRIS, and AGENCY OF NATURAL RESOURCES	}	29-1-99 Wrcv

[ENTERED: SEPTEMBER 15, 2005]

In the above-entitled cause, the Clerk will enter:

The entry order issued on June 8, 2005 in the above-captioned matter is withdrawn, and the attached entry order is issued in its place.

[ ] Publish

[x] Do Not Publish

BY THE COURT:

/s/
Paul L. Reiber, Chief Justice

/s/
Denise R. Johnson, Associate Justice

/s/
Marilyn S. Skoglund, Associate Justice

/s/

Katherine A. Hayes, Superior Judge,
Specially Assigned

/s/

Frederic W. Allen (Ret.), Chief Justice
Specially Assigned

ENTRY ORDER

2005 VT 64

SUPREME COURT DOCKET NO. 2003-555

APRIL TERM, 2005

Paul L. Bidgood	}	APPEALED FROM:
	}	
v.	}	Windsor Superior Court
	}	
Town of Cavendish, et al.	}	DOCKET NOS. 29-1-99 and 436-9-99 WrCv
	}	
	}	Trial Judge: Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

¶1. Appellant Paul Bidgood appeals a trial court order denying his request to rescind a settlement agreement and resume trial to adjudicate issues that the parties had resolved through the settlement agreement. We affirm.

¶2. This case involves a dispute between Mr. Bidgood and the Town of Cavendish over the reclassification of a town highway from Class 3 to Class 4. Mr. Bidgood sought to ensure winter access to his property, which fronts the highway, by filing two actions in Windsor Superior Court: (1) an appeal from the road commissioner's reclassification determination; and (2) a civil action seeking a declaration of the highway's legal status and asserting various tort claims against the Town of Chester, Cavendish,

a town manager, and the Agency of Natural Resources. The trial court consolidated both actions and held a trial.

¶3. During trial, the parties reached a comprehensive settlement agreement of all contested matters. In negotiating the agreement, Mr. Bidgood was represented by two attorneys. The court incorporated the settlement agreement into an Order of Dismissal on May 16, 2003, and dismissed the case with prejudice "with leave to reopen within ninety (90) days" if certain conditions in the settlement agreement were not satisfied. Accordingly, the deadline for reopening the case under the court's order was August 14, 2003.

¶4. On August 25, 2003, Mr. Bidgood filed a document dated August 14, 2003, and titled, "Motion to Inform The Court That Plaintiff Rescinds Settlement:" On October 2, 2003, Mr. Bidgood filed another motion titled motion to resume trial. The trial court denied Mr. Bidgood's motion to inform stating that it did not contain an appropriate request for court action. The trial court also denied the motion to resume trial, finding that plaintiff "has not shown grounds to set aside the Order of May 16, 2003 in a manner required by Rule 60(b) of the Vermont Rules of Civil Procedure," and that the contingency set out in the dismissal order was unsatisfied. Plaintiff appeals.

¶5. Mr. Bidgood requests this court to reach the merits and adjudicate his claims against the opposing parties. He also argues that the lower court lacked subject matter jurisdiction to dismiss the case because it failed to: (1) follow statutory procedures; (2) appoint commissioners; (3) stay the proposed reclassification; (4) make all interested persons parties to the action; and (5) bring the controversy before the Transportation Board.

¶6. We affirm because the doctrine of res judicata precludes Mr. Bidgood from collaterally attacking the validity of the order. "Res judicata bars litigation of a claim or defense if there exists a final judgment in former litigation in which the parties, subject matter, and causes of action are identical or substantially identical." Kellner v. Kellner, 2004 VT 1, ¶ 8, 176 Vt. 571, 844 A.2d 743 (mem.) (quotations omitted). Res judicata also bars parties from litigating claims that the parties should have raised in a previous proceeding. Id. A settlement agreement that is incorporated into a final judgment can be disturbed pursuant only to the procedures set forth in Vermont Rule of Civil Procedure 60(b). Id. ¶¶ 6,8 (discussing and relying on Johnston v. Wilkins, 2003 VT 56, 175 Vt. 567, 830 A.2d 695 (mem.)).

¶7. In the present case, the settlement agreement was incorporated into a final order. The parties are identical. The subject matter—reclassification and maintenance of a town highway—was central to the litigation that the settlement agreement resolved. Thus, Mr. Bidgood's renewed claims are barred by res judicata, and the final order controls.

¶8. The final order permitted Mr. Bidgood to reopen the case by August 14, 2003. He did not file his motion to rescind the settlement agreement until after that deadline, and thus the motion did not reopen the case. Although Mr. Bidgood's motion to inform was dated August 14, 2003, he filed it with the court on August 25. V.R.C.P. 3 ("A civil action is commenced by filing a complaint with the court . . . ."); V.R.C.P. 5(e) (filing of papers with the court "shall be made by filing them with the clerk of the court.") While Mr. Bidgood filed the motion with the clerk of the court, he was not timely because it was not filed until August 25, after the ninety-day deadline under the settlement agreement. Therefore, the final judgment remains binding on Mr. Bidgood.

¶9. The final judgment may be disturbed pursuant only to Rule 60(b). The trial court treated Mr. Bidgood's motion to resume trial as a motion under Rule 60(b) and found that he showed no grounds under the rule to set aside the order. We review a Rule 60(b) decision narrowly, and will not overturn it unless the trial court abused its discretion. Murphy v. Dept. of Taxes, 173 Vt. 571, 573, 795 A.2d 1131, 1133 (2001) (mem.). The record contains no evidence that Mr. Bidgood acted under duress, or that an unfair bargaining process took place. Indeed, he was represented by two attorneys during trial and the negotiation process. Thus, the trial court did not abuse its discretion.

¶10. Mr. Bidgood attempts to challenge the superior court's subject matter jurisdiction over this case by arguing that the trial court failed to follow statutory procedures in reclassifying the highway. Title 4 V.S.A. § 113 confers jurisdiction on the superior court in all civil cases except in certain situations not applicable to this case. Mr. Bidgood invoked the jurisdiction of the superior court when he filed an action under Vermont Rule of Civil Procedure 75, and appealed the road commissioner's determination. Under § 113, the superior court had jurisdiction over these actions, and Mr. Bidgood's challenges to the correctness of the court's decision do not remove its jurisdiction. Thus, the settlement agreement controls and we, therefore, affirm.

Affirmed.

BY THE COURT:

/s/
Paul L. Reiber, Chief Justice

[ ] Publish /s/
Denise R. Johnson, Associate Justice

[ ] Do Not Publish /s/
Marilyn S. Skoglund, Associate Justice

/s/
Katherine A. Hayes, Superior Judge,
Specially Assigned

/s/
Frederic W. Allen (Ret.), Chief Justice
Specially Assigned

STATE OF VERMONT
TRANSPORTATION BOARD

In re Request of Paul F. Bidgood for Review of)
a Decision by the Cavendish Selectboard Not) T.B. 215
to Prove Winter Maintenance of Old Bailey Hill) (2003)
Road (TH #36), a Class 3 Town Highway in the)
Town of Cavendish)

MOTION TO DISMISS AND
MEMORANDUM OF LAW

Excerpt:

"On October 14, 2003, the Town of Cavendish Selectmen held a hearing in accordance with the Settlement Stipulation for the purpose of considering reclassifying T.H. #36. On November 12, 2003, the settlement contingency was fulfilled. The road was reclassified to a Class 3 three season road." At page 3.

DATED at Burlington, Vermont, this 4th day of March, 2004.

WOODWARD & KELLEY, PLLC

By: /s/

Marikate E. Kelley, Esquire
Attorney for Town of Cavendish

SELECTMEN'S REPORT AND FINDINGS OF FACT

OLD BAILEY HILL ROAD, TOWN HIGHWAY 36

Excerpt:

...

"Accordingly, having made these findings and following a site visit and duly posted hearing, the Selectmen of the Town of Cavendish conclude that the public good, necessity, and convenience require reclassification of 0.55 miles of Old Bailey Hill Road, Town Highway 36 from Class 4 to Class 3 with three season, non-winter, maintenance."

/s/
Daniel W. Churchill

/s/
Robert Glidden

/s/
George Timko

Received for Record November 12, A.D., 2003 at 9:20 a.m.
Attest: /s/, Town Clerk
Jane Pixley

Superior Court of Vermont
County of Windsor

ENTRY REGARDING MOTION

Bidgood et al vs. Cavendish et al **29-1-99 Wrcv**
[Birmingham/Carroll/Woodward/Earle]

Title: **Motion to Resume Trial,** No. 23
Filed on: October 2, 2003
Filed By: Pro Se, Attorney for:
Plaintiff Paul F. Bidgood

Response filed on 10/10/03 by Attorney Carroll

Response filed on 10/20/03 by Attorney Earle

__ Granted Compliance by_____

_x_ Denied

__ Scheduled for hearing on: __ at ___; Time Allotted __

__ Other

Plaintiff has not shown grounds to set aside the Order of May 16, 2003 in the manner required by Rule 60(b) of the Vermont Rules of Civil Procedure. Neither has Plaintiff shown that the contingency of reclassification failed to occur.

Mary Miles Teachout November 10, 2003
Judge Date

Date copies sent to: 11/18/03 Clerk's Initials: BF

Copies sent to:

Attorney Matthew T. Birmingham III for Defendant Town of Cavendish

Attorney Matthew T. Birmingham III for Defendant Town of Cavendish Selectmen

Attorney Matthew T. Birmingham III for Defendant William Buswell

Attorney Matthew T. Birmingham III for Defendant Daniel W. Churchill

Attorney Matthew T. Birmingham III for Defendant Sandra F. Sterns

Attorney Matthew T. Birmingham III for Defendant Robert W. Glidden

Attorney Matthew T. Birmingham III for Defendant Wayne Gilcris

Attorney James F. Carroll for Interested Person Town of Chester

Attorney Caroline S. Earle for Interested Person State of Vermont Agency of Natural Resources

Attorney Philip C. Woodward

Plaintiff Paul F. Bidgood

Superior Court of Vermont
County of Windsor

ENTRY REGARDING MOTION

Bidgood et al vs. Cavendish et al **29-1-99 Wrcv**
[Birmingham/Gillies/Carroll/Woodward/Earle]

Title: **Motion to Inform the Court that Plaintiff Rescinds Settlement,** No. 18
Filed on: August 25, 2003
Filed By: Pro Se, Attorney for:
Plaintiff Paul F. Bidgood

Response: NONE

__ Granted Compliance by_____

__ Denied

__ Scheduled for hearing on: __ at ___; Time Allotted __

_x_ Other

Dismissed as a motion, as it does not contain an appropriate request for court action.

Mary Miles Teachout
Judge

October 16, 2003
Date

Date copies sent to: 10/21/03 Clerk's Initials: BF

Copies sent to:

Attorney Matthew T. Birmingham III for Defendant Town of Cavendish

Attorney Matthew T. Birmingham III for Defendant Town of Cavendish Selectmen

Attorney Matthew T. Birmingham III for Defendant William Buswell

Attorney Matthew T. Birmingham III for Defendant Daniel W. Churchill

Attorney Matthew T. Birmingham III for Defendant Sandra F. Sterns

Attorney Matthew T. Birmingham III for Defendant Robert W. Glidden

Attorney Matthew T. Birmingham III for Defendant Wayne Gilcris

Attorney James F. Carroll

Attorney Caroline S. Earle

Attorney Philip C. Woodward

Plaintiff Paul F. Bidgood

STATE OF VERMONT
WINDSOR COUNTY, SS.

Paul F. Bidgood,	)	
Andrew M. Bidgood,	)	
and George M. Bidgood,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Windsor Superior
Town of Cavendish,	)	Court
Town of Chester,	)	Civil Action
State of Vermont Agency	)	Docket No.
of Natural Resources	)	29-1-99-Wrcv
(Department of Forests,	)	Docket No.
Parks and Recreation)	)	436-9-99-Wrcv
and Richard Svec,	)	
	)	
Defendants	)	

MOTION TO RESUME TRIAL

NOW COMES Plaintiff Paul F. Bidgood and requests the Court to resume the trial in the above captioned cases. The plaintiff has earlier rescinded the Settlement Stipulation in accordance with its terms that allowed leave to reopen within 90 days if the Defendant Town of Cavendish did not comply with paragraph 12. Additionally, the plaintiff informs the Court that 1) he signed the settlement under the financial stress effacing more than $70,000.00 in legal fees and costs, with no end in sight as to what the final costs would be, with such financial position hemorrhaging his family's economic survival, 2) the plaintiff signed the settlement while under the physical stress of not having the stamina of seeing this case through as plaintiff was suffering from sleep apnea which was not diagnosed until after the settlement was signed when the plaintiff was able to see his

primary care physician in regards to the plaintiffs concerns of chronic and severe fatigue and 3) the plaintiff signed the settlement under the emotional stress, anguish and duress of seeing his family destroyed with constant quarreling with his wife over the mounting legal bills and costs, not having any quality time to spend with his wife and three school-aged children, because of the significant amount of time required to pursue these cases and seeing his father-son relationship destroyed by the events of these cases, because his father blames the plaintiff for the loss of class 3 highway maintenance on Old Bailey Hill Road.

Plaintiff has now refinanced his primary residence adding to the principal owed on his mortgage and will be paying off legal fees and costs for the next 15 years, the plaintiff is now under the care of an otolaryngologist for treatment of sleep apnea and the plaintiff's immediate family situation with his wife and three children is somewhat better as the plaintiff has terminated his legal representation so that there are no longer quarrels about mounting legal expenses, but his family still suffers from the time requirements, stress, anguish and duress resulting from these cases. Additionally, the Court should know that the plaintiff attempted in good faith to implement the terms of the settlement and began to clear land for a private drive, however plaintiff suffered heat stroke from this physically demanding undertaking for which an ambulance was called and plaintiff does not want to again be in a situation where there may be a repetition of such an incident.

In paragraph 5 of the Agency of Natural Resource's (Department of Forests, Parks and Recreation) ("the State") Motion To Stay Determination of Plaintiff's Motion To Rescind they refer to a letter circulated by the State to the various parties for future efforts to engage in a mediation session to salvage the Settlement Stipulation. The plaintiff informs the Court that there is no one more interested in

settling this matter than the plaintiff, however the plaintiff will not agree to any settlement that does not provide for 1) access to the plaintiff's property over a year-round maintained public highway, 2) an agreement that Cavendish Town Highway No. 36, Old Bailey Hill Road ends on the plaintiff's property before the Cavendish/Chester town line, 3) that the former public highway in Chester leading from near Bridge No. 70 on the Smokeshire Road towards the Cavendish/Chester town line has been discontinued and 4) the reimbursement of the more than $70,000.00 in legal fees and costs that the plaintiff has incurred. Furthermore, the plaintiff will not grant permission of any sort to the Vermont Association of Snowmobile Travelers to utilize the plaintiff's property. The plaintiff has responded to the State's letter indicating full support to a settlement of this case that provides for the above. Basically the plaintiff believes all defendants should come clean and put this mess behind them.

The plaintiff further informs the Court that the Town of Cavendish is apparently asserting jurisdiction over these cases as it has noticed a public hearing to classify Cavendish Town Highway No. 36, Old Bailey Hill Road to a class 3 town highway where the Town would only provide maintenance for three seasons of the year leaving plaintiff's property inaccessible from approximately mid-November to mid-May each year. The plaintiff requests this Court to resume the trial in these cases so that the plaintiff may secure a judgment ordering the defendants to provide the plaintiff and his family access to their property on Old Bailey Hill Road over a year-round maintained public highway so that the plaintiff and his family may use and enjoy their premises and be safe and secure in their persons and property, secure declarations as to the location of the end of Cavendish Town Highway No. 36, Old Bailey Hill Road before the Cavendish/Chester town line and the discontinuance of the alleged public highway in Chester, along with an award of attorneys fees and costs.

DATED at West Boylston, Massachusetts, this 30TH day of September 2003.

I, Paul F. Bidgood, hereby state that I served the Plaintiff's, Motion To Resume Trial, to all counsel of record, Caroline S. Earle, Esq., Phillip C. Woodward, Esq., James F. Carroll, Esq. and Matthew T. Birmingham III, Esq. via first class prepaid mail.

By: /s/
Paul F. Bidgood

Town of Cavendish

Paul & Patricia Bidgood
14 Fairbanks Street
West Boylston, MA 01583

September 11, 2003

Excerpt:

Dear Paul & Patricia:

This letter is sent to you as owner of property which abuts Town Highway #36, Old Bailey Hill Road. The purpose of this correspondence is to inform you that the Board of Selectmen of the Town of Cavendish, have reviewed the status of that portion of Town Highway #36 which is currently classified as Class IV Town Highway and have decided that it should be considered for reclassification to Class III, Three Season Town Highway, consistent with 19 VSA § 301 and 302, et seq. and 19 VSA § 708, et seq.
...

Very truly yours,
/s/
Richard F. Svec, Town Manager
for the Town of Cavendish
Board of Selectmen

Paul F. Bidgood
14 Fairbanks Street
West Boylston, MA 01583
(508) 835-8846

August 14, 2003

Jane Ammel, Clerk
Windsor County Superior Court
P.O. Box 458
Woodstock, Vermont 05091-0458

Re: **Bidgood et al. v. Town of Cavendish, et al.**
Docket No: 29-1-99 Wrcv

Bidgood v. Town of Cavendish, et al.
Docket No: 436-9-99 Wrcv

Dear Jane:

Enclosed for filing, please find Plaintiff's Motion To Inform The Court That Plaintiff Rescinds Settlement.

Thank you for your attention to this matter.

Very truly yours,
/s/
Paul F. Bidgood

Cc: Caroline S. Earle, Esquire (w/encl.)
Phillip C. Woodward, Esquire (w/encl.)
James F. Carroll, Esquire (w/encl.)
Matthew T. Birmingham III, Esquire (w/encl.)

BEST AVAILABLE COPY

Paul F. Bidgood
14 Fairbanks Street
West Boylston, MA 01583
(508) 835-8846

August 14, 2003

Jane Ammel, Clerk
Windsor County Superior Court
P.O. Box 458
Woodstock, Vermont 05091-0458

Re: Bidgood et al. v. Town of Cavendish, et al.
Docket No: 29-1-99 Wrcv

Bidgood v. Town of Cavendish, et al.
Docket No: 436-9-99 Wrcv

Dear Jane:

Enclosed for filing, please find Plaintiff's Motion To Inform The Court That Plaintiff Rescinds Settlement.

Thank you for your attention to this matter.

Very truly yours,

/s/
Paul F. Bidgood

Cc: Caroline S. Earle, Esquire (w/encl.)
Phillip C. Woodward, Esquire (w/encl.)
James F. Carroll, Esquire (w/encl.)
Matthew T. Birmingham III, Esquire (w/encl.)

STATE OF VERMONT
WINDSOR COUNTY, SS.

Paul F. Bidgood,	)	
Andrew M. Bidgood,	)	
and George M. Bidgood,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Windsor Superior
Town of Cavendish,	)	Court
Town of Chester,	)	Civil Action
State of Vermont Agency	)	Docket No.
of Natural Resources	)	29-1-99-Wrcv
(Department of Forests,	)	Docket No.
Parks and Recreation)	)	436-9-99-Wrcv
and Richard Svec,	)	
	)	
Defendants	)	

MOTION TO INFORM THE COURT THAT PLAINTIFF RESCINDS SETTLEMENT

NOW COMES Plaintiff Paul F. Bidgood and informs the Court that plaintiff rescinds settlement and requests resumption of the trail be set at the earliest convenience of the court.

DATED at West Boylston, Massachusetts, this 14th of August 2003.

I, Paul F. Bidgood, hereby state that I served the Plaintiff's, Motion To Inform The Court That Plaintiff Rescinds Settlement, to all counsel of record, Caroline S. Earle, Esq., Phillip C. Woodward, Esq., James F. Carroll, Esq. and Matthew T. Birmingham III, Esq. via first class prepaid mail.

By: /s/
Paul F. Bidgood

STATE OF VERMONT
WINDSOR COUNTY, SS.

Paul F. Bidgood, Andrew M. Bidgood, and George M. Bidgood,	)	
Plaintiffs	)	
v.	)	Windsor Superior Court
Town of Cavendish and Selectmen of the Town of Cavendish,	)	Docket No. 29-1-99-Wrcb
Defendants	)	

ORDER OF DISMISSAL

In this matter, Paul F. Bidgood is represented by his attorneys Tarrant Marks & Gillies and the Town of Cavendish is represnted by its attorneys Birmingham & Moore, P.C. Plaintiffs Andrew W. Bidgood and George M. Bidgood have already been dismissed from this matter by previous order of the Court.

Based upon the Stipulation for Settlement dated April 4, 2003, as amended, the Court orders as follows:

1. Docket No. 29-1-99Wrcb is dismissed WITH PREJUDICE, with leave to reopen within ninety (90) days if the conditions set forth in paragraphs 12 and 13 of the Stipulation for Settlement are not satisfied.

2. Each party shall pay their own costs.

5/16/03 /s/

Date Honorable Alan W. Cook